

KENTUCKY UNEMPLOYMENT COMPENSATION LAWS AND REGULATIONS

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UNEMPLOYMENT COMPENSATION LAW

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CONSTRUCTION OF CHAPTER

341.005. Definitions.

As used in this chapter, unless the context clearly requires otherwise:

- (1) "Cabinet" means the Cabinet for Workforce Development.
- (2) "Secretary" means the secretary for workforce development or his duly authorized representative.
- (3) "Commission" means the unemployment insurance commission.

341.020. Funds, state, contributions and benefits.

As used in this chapter, unless the context clearly requires otherwise:

- (1) "Fund" means the unemployment insurance fund established by KRS 341.490, to which all contributions, and from which all benefits shall be paid;
- (2) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Dominion of Canada and the Virgin Islands;
- (3) "Contributions" means the money payments, exclusive of interest and penalties, to the unemployment insurance fund required by this chapter and by any previous unemployment compensation law of this state; and
- (4) "Benefits" means the money payments payable to a worker under this chapter and under any previous unemployment compensation law of this state with respect to his unemployment.

341.030. Wages.

- (1) As used in this chapter, unless the context clearly requires otherwise, and except as provided in subsections (2) to (7) of this section, "wages" means all remuneration for services, including commissions, bonuses, and, except for services performed in agriculture and domestic employment, the cash value of all remuneration in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the commission.
- (2) Amounts paid to traveling salesmen or other workers as allowance or reimbursement for traveling or other expenses, incurred on the business of the employing unit, constitute wages only to the extent of the excess of the amounts over the expenses actually incurred and accounted for by the worker to his employer; provided, however, that the cash value of meals and lodging when furnished to the worker for the convenience of the employer shall not constitute wages.
- (3) For purposes of this chapter, the term "wages" includes tips which are:
 - (a) Received while performing services which constitute employment; and
 - (b) Included in a written statement furnished to the employer pursuant to section 6053(a) of the Internal Revenue Code; and
 - (c) Shall be treated as having been paid by the employing unit.
- (4) "Wages" does not include the amount of any payment made to, or on behalf of, a worker under a plan or system established by an employing unit that makes provision for its workers generally or for a class of its workers, including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment, on account of:
 - (a) Retirement;
 - (b) Sickness or accident disability but, in the case of payments made to an employee or any of his dependents, this subsection shall

- exclude from the term "wages" only payments which are received under a workers' compensation law;
- (c) Medical and hospitalization expenses in connection with accident or sickness disability; or
 - (d) Death, if the worker has not:
 - 1. The option to receive, instead of provision for the death benefit, any part of the payment, or if the death benefit is insured, any part of the premiums or contributions to premiums paid by his employing unit; and
 - 2. The right, under the provisions of the plan or system or policy of insurance providing for the death benefit, to assign the benefit, or to receive a cash consideration in lieu of it either upon his withdrawal from the plan or system providing for the benefit or upon termination of the plan or system or policy of insurance or of his employment with his employing unit.
- (5) "Wages" does not include any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of six (6) calendar months following the last calendar month in which the employee worked for the employer.
 - (6) "Wages" does not include the amount of any payment made by an employing unit without deduction from the remuneration of the worker of the tax imposed under section 3101 of the Internal Revenue Code or any payment required from an employer under a state unemployment compensation law with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor.
 - (7) "Wages" does not, for the purposes of KRS 341.260 to 341.310, include that part of remuneration which, after wages equal to eight thousand dollars (\$8,000) have been paid in a calendar year to a worker by a subject employer or his predecessor with respect to covered employment during any calendar year, is paid to the worker by the subject employer during the calendar year unless that part of the wages is subject to a tax under a federal law, imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund. For the purpose of this subsection, the term "covered employment" shall include service constituting covered employment under any unemployment compensation law of another state.

341.040. Reserve account, pooled account and annual payroll.

As used in this chapter, unless the context clearly requires otherwise:

- (1) "Reserve account" means a separate book account maintained by the cabinet for each subject contributing employer under KRS 341.530 and 341.540. No amount shall be credited to any reserve account on any date which has not been actually received by the cabinet by that date, and no benefit amount shall be charged against any reserve account by any date for which a check has not been written and sent by that date;
- (2) "Reimbursing employer account" means a separate book account maintained by the cabinet for each subject employer who elects to make payments in lieu of contributions pursuant to KRS 341.275 or KRS 341.277. No benefit amount shall be charged against any reimbursing employer account prior to the issuance of benefit checks against that account;
- (3) "Pooled account" means a separate book account maintained by the cabinet under KRS 341.550;

- (4) "Annual payroll" means the total amount of wages paid by a subject employer during a twelve-consecutive-month period for covered employment.

341.050. Covered employment.

- (1) As used in this chapter, unless the context clearly requires otherwise and subject to the provisions of KRS 341.055, "covered employment" means service, including service in interstate commerce, performed by:
- (a) An individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee;
 - (b) An officer of a corporation;
 - (c) An individual who performs service for remuneration for any employing unit:
 - 1. As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services, for his principal; or
 - 2. As a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his principal (except for side-line sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations; provided, that for purposes of this paragraph, the term "covered employment" shall include services described in subparagraphs 1. and 2. above only if the contract of service contemplates that substantially all of the services are to be performed personally by such individual; such individual does not have a substantial investment in facilities used in connection with the performance of the services (other than in facilities for transportation); and the services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed;
 - (d) Except as provided in KRS 341.055(4), an individual in the employ of this state or any of its instrumentalities or any political subdivision or municipality thereof or any of its instrumentalities or any instrumentality of more than one (1) of the foregoing or any instrumentality of any of the foregoing and one (1) or more other states or political subdivisions or municipalities, provided that such service is excluded from "employment" as defined in the Internal Revenue Code solely by reason of section 3306(c)(7) of the Code but only when such service is required to be "covered employment" under this chapter by reason of Section 3309 of the Internal Revenue Code, as amended, as a requirement of section 3304 of that Code, as amended, for approval of the state's Unemployment Insurance Law; or
 - (e) An individual in the employ of a religious, charitable, educational or other organization but only if the following conditions are met:
 - 1. The service is excluded from "employment" as defined in the Internal Revenue Code solely by reason of section 3306(c)(8) of that code but only when such service is required to be "covered

- employment" under this chapter by reason of section 3309 of the Internal Revenue Code, as amended, as a requirement of section 3304 of that Code, as amended, for approval of the state's Unemployment Insurance Law; and
2. The organization had four (4) or more individuals in employment for some portion of a day in each of twenty (20) different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time; or
- (f) An individual in the employ of an employing unit performing agricultural service, as defined in section 3306(k) of the Internal Revenue Code, if either of the following conditions are met:
1. The employing unit paid wages of twenty thousand dollars (\$20,000) or more in a calendar quarter in either the current or preceding calendar year for service performed in agricultural labor; or
 2. The employing unit employed for some portion of a day in each of twenty (20) different calendar weeks, whether or not such weeks are consecutive, ten (10) or more workers (irrespective of whether the same workers were in employment in each of such weeks) performing service in agricultural labor; or
- (g) An individual in the employ of an employing unit performing domestic service in a private home, a local college club, or a local chapter of a college fraternity or sorority if the employing unit paid wages of one thousand dollars (\$1,000) or more in a calendar quarter in either the current or preceding calendar year for service performed in domestic employment; or
- (h) An individual's service described in paragraphs (e) or (f) or (g) of this subsection, has not ceased to be covered employment under paragraph (c) of subsection (3) of KRS 341.250.
- (2) The term "covered employment" shall include:
- (a) An individual's entire service, performed within, or both within and without, this state if the service is localized in this state. Service shall be deemed to be localized within a state if:
 1. The service is performed entirely within such state; or
 2. The service is performed both within and without such state but the service performed without such state is incidental to the individual's service within the state; for example, is temporary or transitory in nature or consists of isolated transactions.
 - (b) An individual's entire service, wherever performed within the United States, the Virgin Islands or Canada, if:
 1. Such service is not covered under the unemployment compensation law of any other state, the Virgin Islands or Canada; and
 2. The place from which the service is directed or controlled is in this state.
 - (c) The service of an individual who is a citizen of the United States, performed outside the United States (except in Canada), in the employ of an American employer (other than service which is deemed "covered employment" under the provisions of paragraphs (a) or (b) of this subsection or the parallel provisions of another state's law), if:
 1. The employer's principal place of business in the United States is located in this state; or
 2. The employer has no place of business in the United States, but
 - a. The employer is an individual who is a resident of this state; or

- b. The employer is a corporation which is organized under the laws of this state; or
 - c. The employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or
- 3. None of the criteria of subparagraphs 1. and 2. of this paragraph is met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state.
- 4. An "American employer," for purposes of this paragraph, means:
 - a. An individual who is a resident of the United States; or
 - b. A partnership if two thirds (2/3) or more of the partners are residents of the United States; or
 - c. A trust, if all of the trustees are residents of the United States; or
 - d. A corporation organized under the laws of the United States or of any state.
- 5. The term "United States," for the purposes of this subsection, includes the States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.
- (d) Service performed by an officer or member of the crew of an American vessel or American aircraft on or in connection with such vessel or such aircraft, if the operating office, from which the operations of such vessel operating on navigable waters within, or the operation of such aircraft within or the operations of such vessel or such aircraft, within or without, the United States are ordinarily and regularly supervised, managed, directed and controlled is within this state.
- (3) Notwithstanding any other provisions of this section or any of the provisions of KRS 341.055, the term "covered employment" shall also include service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act is required to be covered under this chapter.
- (4) For the purpose of this chapter, if the service performed during one half (½) or more of any pay period by an individual for the employing unit employing him constitutes covered employment, all the services of such individual for such period shall be deemed to be covered employment; but if the services performed during more than one half (½) of any such pay period by an individual for the employing unit employing him do not constitute covered employment, then none of the services of such individual for such period shall be deemed to be covered employment. As used in this subsection, the term "pay period" means a period (of not more than thirty-one (31) consecutive days) for which a payment for service is ordinarily made to the individual by the employing unit employing him. This subsection shall not be applicable with respect to services performed in a pay period by an individual for the employing unit employing him, when any of such service is excluded because it is subject to an unemployment insurance program established by an act of congress.

341.055. Noncovered employment.

Unless the employing unit thereof has elected that the services become covered employment under the provisions of subsection (3) or (4) of KRS 341.250, "covered employment" shall not include:

- (1) Service performed in agricultural labor, as defined in section 3306(k) of the Internal Revenue Code, but only if the service is not defined as "covered employment" in paragraphs (f) and (h) of subsection (1) of KRS 341.050; or agricultural service performed prior to January 1, 1980, by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act;
- (2) Domestic service in a private home, a local college club, or local chapter of a college fraternity or sorority, but only if the service is not defined as "covered employment" in paragraphs (g) and (h) of subsection (1) of KRS 341.050;
- (3) Service in the employ of an organization described in paragraph (e) of subsection (1) of KRS 341.050, but only if the service is not defined as "covered employment" in paragraphs (e) and (h) of subsection (1) of KRS 341.050;
- (4) Certain service performed in the employ of this state or any of its political subdivisions, municipalities or instrumentalities thereof, but only if the service is performed by an individual in the exercise of his or her duties:
 - (a) As a public elected official;
 - (b) As a member of a legislative body of this state or a political subdivision thereof;
 - (c) As a member of the judiciary of this state or political subdivision thereof;
 - (d) As a member of the state National Guard or Air National Guard;
 - (e) As an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency; or
 - (f) In a position which, under or pursuant to the state law is designated as a major nontenured policymaking or advisory position, or a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight (8) hours per week or by reason of service on any appointed state or local board or commission;
- (5) Except as provided in paragraph (d) of subsection (1) of KRS 341.050, service performed in the employ of any other state or any political subdivision thereof, or of the United States government or an instrumentality of the United States exempt by federal law from the contributions imposed by this chapter, except that to the extent that the Congress of the United States shall permit states to require instrumentalities of the United States to make payments into an unemployment fund under a state unemployment insurance law, all the provisions of this chapter shall be applicable to such instrumentalities, and to services performed for such instrumentalities, in the same manner, to the same extent and on the same terms as to all other employing units, individuals and services; provided that if this state shall not be certified for any year by the secretary of labor of the United States under section 3304 of the Internal Revenue Code, the payments required of such instrumentalities, with respect to such year, shall be refunded from the fund in the same manner and within the same period as is provided in KRS 341.330 with respect to contributions erroneously collected;
- (6) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of Congress. The secretary may enter into agreements with the proper agencies under such act of Congress to provide reciprocal treatment to

workers who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment compensation under such act of Congress, or who have, after acquiring potential rights to unemployment compensation under such act of Congress, acquired rights to benefits under this chapter;

- (7) Service performed by a worker in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one (21) in the employ of his father or mother;
- (8) Service performed in the employ of a foreign government, including service as a consular, or other officer or employee, or a nondiplomatic representative, or of an instrumentality wholly owned by a foreign government if:
 - (a) The service is of a character similar to that performed in foreign countries by employees of the United States government or of an instrumentality thereof; and
 - (b) The secretary finds that the United States secretary of state has certified to the United States secretary of the treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and of instrumentalities thereof;
- (9) Service performed as a student nurse in the employ of a hospital or a nurses' training school by a worker who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to the laws of this state; and service performed as an intern in the employ of a hospital by a worker who has completed a four (4) years' course in a medical school chartered or approved pursuant to the laws of this state;
- (10) Service performed by a worker for an employing unit as an insurance agent or as an insurance solicitor, if all such service performed by such worker for such employing unit is performed for remuneration solely by way of commission;
- (11) Service performed by a worker under the age of eighteen (18) in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;
- (12) Service not in the course of the employing unit's trade or business performed in any calendar quarter by a worker, unless the cash remuneration paid for such service is fifty dollars (\$50.00) or more and such service is performed by an individual who is regularly employed by such employing unit to perform such service. For the purpose of this subsection, an individual shall be deemed to be regularly employed by an employing unit during a calendar quarter only if:
 - (a) On each of some twenty-four (24) days during the quarter, the individual performs for such employing unit for some portion of the day service not in the course of the employing unit's trade or business; or
 - (b) The individual was regularly employed, as determined under paragraph (a) of this subsection, by the employing unit in the performance of the service during the preceding calendar quarter;

- (13) Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501(a) of the Internal Revenue Code, other than an organization described in section 401(a), or under section 521 of the Internal Revenue Code, if the remuneration for the service is less than fifty dollars (\$50.00);
- (14) Service performed in the employ of an international organization;
- (15) Service covered by an election, duly approved by the agency charged with the administration of any other state or federal employment security law, in accordance with an arrangement pursuant to KRS 341.145 during the effective period of the election;
- (16) Service performed in the employ of a school, college, or university, if the service is performed:
 - (a) By a student who is enrolled and is regularly attending classes at the school, college or university; or
 - (b) By the spouse of such a student, if the spouse is advised, at the time the spouse commences to perform the service, that:
 - 1. The employment of the spouse to perform the service is provided under a program to provide financial assistance to the student by the school, college, or university; and
 - 2. The employment will not be covered by any program of unemployment insurance;
- (17) Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if the service is an integral part of such program, and such institution has so certified to the employer, except that this subsection shall not apply to service performed in a program established for or on behalf of an employer or group of employers;
- (18) Service performed in the employ of a hospital, if the service is performed by a patient of the hospital, as defined in KRS 341.067;
- (19) Service performed in the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches; or by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by the order; or
- (20) Service defined in KRS 341.050(1)(d) and (e) performed for a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age, physical or mental deficiency, or injury, or providing remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by an individual receiving the rehabilitation or remunerative work; or as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof by an individual receiving the work relief or work training; or in a custodial or penal institution by an inmate of such institution.

341.060. Employing unit.

- (1) As used in this chapter, unless the context clearly requires otherwise, "employing unit" means any individual or type of organization, including any partnership, association, society, trust, estate, joint-

stock company, corporation, insurance company, whether any of these are domestic or foreign, or the receiver, trustee in bankruptcy, trustee or the legal representative of a deceased person, or this state or any department, division, administrative unit, political subdivision or municipality thereof, which has or subsequent to January 1, 1936, had one (1) or more workers performing services for it within this state, or one (1) or more workers performing services for it in covered employment in any state, or any successor to any employing unit defined in this subsection.

- (2) All workers performing service within this state for any employing unit which maintains two (2) or more separate establishments within this state shall be deemed to be employed by a single employing unit for all purposes of this chapter.
- (3) For purposes of this chapter agricultural workers who are members of a crew furnished by a crew leader to perform agricultural labor for another person shall be deemed to be employed by such crew leader as the employing unit provided that:
 - (a) Such crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963; or
 - (b) Substantially all the members of such crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment, which is provided by such crew leader; and
 - (c) Such individual is not an employee of such other person within the meaning of paragraph (a).
- (4) For purposes of this chapter, if an individual is furnished by a crew leader to perform agricultural labor for another person and who is not treated as an employee of such crew leader under subsection (3) such other person, and not the crew leader, shall be treated as the employing unit of such individual; and
 - (a) Such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader (either on his behalf or on behalf of such other person) for the agricultural labor performed for such other person.
- (5) For purposes of this section, the term "crew leader" means an individual who:
 - (a) Furnishes individuals to perform agricultural labor for any other person,
 - (b) Pays (either on his behalf or on behalf of such other person) the individuals so furnished by him for the agricultural labor performed by them, and
 - (c) Has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person.

341.067. Hospitals and institutions of higher education.

As used in this chapter, unless the context clearly requires otherwise:

- (1) "Hospital" means an institution which has been licensed, certified or approved by the secretary for human resources as a hospital.
- (2) "Institution of higher education" means an educational institution which:
 - (a) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;
 - (b) Is legally authorized in this state to provide a program of education beyond high school;

- (c) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and
- (d) Is a public or other nonprofit institution.
- (3) Notwithstanding any of the foregoing provisions of this section, all recognized colleges and universities in this state are institutions of higher education for purposes of this chapter.
- (4) (a) "Educational institution," including an institution of higher education as defined in subsection (2) of this section, means:
 - 1. A school in which participants, trainees, or students are offered an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes or abilities from, by or under the guidance of an instructor(s) or teacher(s);
 - 2. It is approved, licensed or issued a permit to operate as a school by the state department of education or other government agency that is authorized within the state to approve, license or issue a permit for the operation of a school; and
 - 3. The courses of study or training which it offers may be academic, technical, trade, or preparation for gainful employment in a recognized occupation.
- (b) In any particular case, the question of whether or not an institution is an educational institution within the meaning of the criteria described above will depend on what that particular institution actually does.

341.069. Governmental entity.

For the purpose of this chapter, a governmental entity is:

- (1) The state government of the Commonwealth of Kentucky and its instrumentalities or a governmental unit thereof as provided for in KRS 341.060;
- (2) A county government and its instrumentalities;
- (3) A city or municipal government and its instrumentalities;
- (4) A city-county urban (merged) government and its instrumentalities;
- (5) A public school district and its instrumentalities;
- (6) An independent governmental organization established pursuant to Kentucky Revised Statutes or by executive order of the governor;
- (7) A special district that is funded or partially funded by county government;
- (8) A joint operation of two or more of the units defined in subsections (1) through (7) above;
- (9) A joint operation of one or more of the units defined in subsection (1) through (8) above with another state or a political subdivision or instrumentality thereof;
- (10) An employing unit which has service performed in covered employment pursuant to KRS 341.050(1)(d) which is not defined as a governmental entity in subsections (1) through (9) of this section is a governmental entity under this subsection.

341.070. Subject employer.

- (1) As used in this chapter, unless the context clearly requires otherwise, "subject employer" means:

- (2) Any employing unit which in any calendar quarter in either the current or preceding calendar year paid for service in covered employment wages of fifteen hundred dollars (\$1,500) or more.
- (3) Any employing unit which for some portion of a day in each of twenty (20) different calendar weeks, whether or not such weeks are consecutive, in either the current or the preceding calendar year, had in covered employment at least one (1) worker (irrespective of whether the same worker was in employment in each such day).
- (4) Any employing unit for which service in covered employment, as defined in paragraph (d) of subsection (1) of KRS 341.050, is performed.
- (5) Any employing unit for which service in covered employment, as defined in paragraph (e) or (h) of subsection (1) of KRS 341.050, is performed.
- (6) Any employing unit for which service in covered employment, as defined in paragraph (f) or (h) of subsection (1) of KRS 341.050, is performed.
- (7) Any employing unit for which service in covered employment, as defined in paragraph (g) or (h) of subsection (1) of KRS 341.050, is performed.
- (8) Any employing unit that succeeds to or acquires the organization, trade, or business, or substantially all of the assets of another employing unit which at the time of such succession or acquisition is a subject employer; or which succeeds to or acquires a portion of the organization, trade, or business of another employing unit, which portion, if treated as a separate employing unit, would be, at the time of the succession or acquisition, a subject employer under subsections (1), (2) or (5) of this section.
- (9) Any employing unit for which service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment fund, or which, as a condition for approval of this chapter for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required, pursuant to such act, to be a "subject employer" under this chapter.
- (10) Any employing unit which has elected to become subject to this chapter, pursuant to subsection (3) of KRS 341.250.
- (11) For purposes of subsections (1) through (6) of this section, covered employment shall include service which would constitute covered employment but for the fact that such service is deemed to be performed entirely within another state pursuant to an election under an arrangement entered into (in accordance with KRS 341.145) by the secretary and an agency charged with the administration of any other state or federal unemployment compensation law.
- (12) Any employing unit which, having become a subject employer under subsection (1) through (9) of this section, has not ceased to be a subject employer under KRS 341.250.
- (13) For purposes of subsections (2), (4) and (5) of this section, if any week includes both December 31 and January 1, the days of that week up to January 1 shall be deemed one calendar week and the days beginning January 1 another week.
- (14) Notwithstanding the provisions of this section or any other provision of this chapter, no employing unit shall be initially determined a subject employer on the basis of covered employment performed more than five (5) calendar years prior to the year in which such determination is made, unless the secretary can show that the records of such employment experience were fraudulently concealed or withheld for the purpose of escaping liability under this chapter.

341.080. Year, quarter, week, and week of unemployment.

As used in this chapter, unless the context clearly requires otherwise:

- (1) Except insofar as the Cabinet for Workforce Development by regulation prescribes the equivalent thereof to meet particular conditions:
 - (a) "Calendar year" means a year beginning on January 1; and
 - (b) "Calendar quarter" means three (3) consecutive months beginning on January 1, April 1, July 1, or October 1.
- (2) "Week" means such period of seven (7) consecutive calendar days as the Cabinet for Workforce Development by regulation prescribes.
- (3) The term "week of unemployment" means any period of seven (7) consecutive days, as prescribed by Cabinet for Workforce Development regulations during which a worker performed less than full-time work and earned less than an amount equal to one and one-fourth (1¼) times the benefit rate determined for him in accordance with the provisions of subsection (2) of KRS 341.380.

341.090. Base period, benefit year and base-period wages.

As used in this chapter, unless the context clearly requires otherwise:

- (1) "Base period" means the first four (4) of the last five (5) completed calendar quarters immediately preceding the first day of a worker's benefit year. However, if an individual lacks sufficient base period wages because of a job-related injury, and he has received or was eligible to receive workers' compensation, upon written application by the claimant an extended base period will be substituted for the current base period on a quarter by quarter basis as needed to establish a valid claim or to increase the benefit rate of a claim if:
 - (a) The individual did not earn wages because of a job-related injury for at least seven (7) weeks of each base period quarter to be substituted by an extended base period quarter;
 - (b) No later than one (1) month prior to the expiration of workers' compensation benefits, the employer or carrier shall inform, orally and in writing, all recipients of their potential eligibility for unemployment insurance, and also provide a statement verifying the individual's eligibility for workers' compensation; and
 - (c) A claim for unemployment insurance compensation is filed no later than the fourth week of unemployment after the end of the period of injury compensated or eligible to be compensated by workers' compensation.
- (2) "Extended base period" means the four (4) quarters prior to the claimant's base period. These four (4) quarters may be substituted for base period quarters on a quarter for quarter basis in order to establish a valid claim or increase the benefit rate of a valid claim regardless of whether the wages have been used to establish a prior claim, except wages transferred to or from another state under a combined wage agreement will be excluded if used in a prior claim. Benefits paid on the basis of an extended base period, which would not otherwise be payable, shall be charged to the pooled account if the chargeable employer is a contributing employer. If the chargeable employer is a reimbursing employer, benefits shall be billed to his reimbursing account.
- (3) "Benefit year" for any worker means the fifty-two (52) week period beginning with the first day of the week with respect to which he first requests a determination which establishes his status as a fully insured worker after the termination of his last preceding benefit year, if any, except that the last preceding benefit year shall be a fifty-three (53) week period if fifty-two (52) weeks would result in the overlapping of any calendar quarter of the base period of the new benefit year with the same calendar quarter of the base period of the

previous benefit year. As used in this subsection, a worker shall be considered as having insured status, without regard to any other provision of this chapter, if at the time of his request he has satisfied the conditions required under subsection (5) of KRS 341.350.

- (4) "Base-period wages" means the wages paid to a worker during his base period by subject employers for covered employment. The secretary upon request of the employee, with respect to this subsection, shall consider wages payable to mean wages paid in order to prevent inequities caused by employer failure to meet a regularly scheduled payday. Lump sum payments deemed to be wages under this chapter shall be reallocated to periods covered by the payments.

341.092. Previously uncovered services.

- (1) For the purpose of this chapter, "previously uncovered wages" means wages paid to a worker during his base-period for service performed prior to January 1, 1978 which is defined in section 121 of the unemployment compensation amendments of 1976, Public Law 94-556, as "previously uncovered services."
- (2) Benefit payments attributable to wages for previously uncovered services shall not be chargeable to contributory employer reserve accounts, or to the pool account or to reimbursing employer accounts for payments in lieu of contributions under this chapter to the extent that such benefit payments are reimbursable under provisions of federal law.

341.094. Extended benefit period -- "On" and "off" indicators.

As used in this chapter, unless the context clearly requires otherwise:

- (1) "Extended benefit period" means a period which:
- (a) Begins with the third week after a week for which there is a state "on" indicator; and
 - (b) Ends with either of the following weeks, whichever occurs later:
 - 1. The third week after the first week for which there is a state "off" indicator; or
 - 2. The thirteenth consecutive week of such period; provided, that no extended benefit period may begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state.
- (2) There is a "state 'on' indicator" for this state for a week if the secretary determines, in accordance with the regulations of the U.S. secretary of labor, that for the period consisting of such week and the immediately preceding twelve (12) weeks, the rate of insured unemployment (not seasonally adjusted) under this chapter:
- (a) Equalled or exceeded 120 percent of the average of such rates for the corresponding 13-week period ending in each of the preceding two (2) calendar years, and
 - (b) Equalled or exceeded five percent (5%).
- (3) There is a "state 'off' indicator" for this state for a week if, for the period consisting of such week and the immediately preceding twelve (12) weeks, either paragraph (a) or (b) of subsection (2) of this section was not satisfied.

341.096. Rate of insured unemployment--Regular, extended and additional benefits--Eligibility period--Exhaustee.

As used in this chapter unless the context clearly requires otherwise:

- (1) "Rate of insured unemployment" means the percentage derived by dividing:
- (a) The average weekly number of workers filing claims for regular benefits in this state for weeks of unemployment with respect to the most recent 13-consecutive-week period, as determined by the secretary on the basis of his report to the U.S. secretary of labor, by
 - (b) The average monthly employment covered under this chapter for the first four of the most recent six completed calendar quarters ending before the end of such 13-week period. Such computations shall be made by the secretary, in accordance with regulations prescribed by the U.S. secretary of labor.
- (2) "Regular benefits" means benefits payable to a worker under this chapter or under an unemployment compensation law of any other state (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) other than extended benefits and additional benefits.
- (3) "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) payable to a worker under the provisions of KRS 341.700 to 341.740 for weeks of unemployment in his eligibility period.
- (4) "Additional benefits" means benefits payable to exhaustees by reason of conditions of high unemployment or by reason of other special factors under the provisions of any state law.
- (5) "Eligibility period" of a worker means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.
- (6) "Exhaustee" means a worker who, with respect to any week of unemployment in his eligibility period:
- (a) Has received, prior to such week, all of the regular benefits that were available to him under this chapter or any other state law (including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85) in his current benefit year that includes such week; provided, that, for the purposes of this paragraph, an individual shall be deemed to have received all of the regular benefits that were available to him although, as a result of a pending appeal with respect to wages and/or employment that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits; or
 - (b) His benefit year having expired prior to such week, has no, or insufficient, wages and/or employment on the basis of which he could establish a new benefit year that would include such week; and
 - (c) Has no right to unemployment benefits or allowances, as the case may be, under the railroad unemployment insurance act or under such other federal laws as are specified in regulations issued by the U.S. secretary of labor; and has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada; but if the individual is seeking such benefits and the appropriate agency finally determines that the individual is not entitled to benefits under such law, the individual shall be considered an exhaustee if the other provisions of this definition are met.

341.100. Suitable work.

- (1) In determining for any purpose under this chapter whether or not any work is suitable for a worker the secretary shall consider, among other pertinent conditions, the degree of risk involved to his health, safety and morals; his physical fitness and prior training; his experience and prior earnings; his length of unemployment and prospects for securing local work in his customary occupation; and the distance of the available work from his residence.
- (2) For the purpose of this chapter, no work shall be suitable nor shall benefits be denied under this chapter to any otherwise eligible worker for refusing to accept new work or new conditions of work under one (1) or more of the following:
 - (a) If the position offered is vacant due directly to a strike, lock-out or other labor dispute;
 - (b) If the wages, hours, or other conditions of the work offered are substantially less favorable than those prevailing for similar work in the locality;
 - (c) If, as a condition of being employed, the worker would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;
 - (d) If the acceptance of such work would be prejudicial to the continuance of an established employer-employee relationship to which the worker is a party.

ADMINISTRATIVE ORGANIZATION

341.110. Unemployment insurance commission; quorum; salaries.

- (1) In the Cabinet for Workforce Development there shall be an Unemployment Insurance Commission composed of the secretary or his duly authorized representative, as ex officio chairman and two (2) members appointed by the governor.
- (2) The secretary shall represent the state and the public. One (1) member shall be appointed as a representative of labor and one (1) as a representative of employers. The chairman and one (1) other member of the commission shall constitute a quorum.
- (3) The members representing labor and employers shall be appointed on the basis of their merit and fitness to perform their duties and exercise the responsibilities of their offices. They shall be citizens of this state and not less than thirty (30) years of age.
- (4) The terms of each member appointed to represent labor and the employers shall be for four (4) years from the date of appointment and until a successor is appointed and qualified, except that appointments to vacancies shall be for the unexpired term.
- (5) The compensation of the members representing labor and employers shall be \$12,000 each per annum.

341.115. Powers and duties of the secretary--Rules and regulations--Appeals.

- (1) The secretary shall have the power and authority to adopt, amend, or rescind such rules and regulations as he deems necessary or suitable for the proper administration of this chapter. The commission shall determine its own organization and methods of procedure.
- (2) General and special rules may be adopted, amended or rescinded by the secretary only after public hearing or opportunity to be heard thereon, of which proper notice has been given. General rules shall become effective ten (10) days after filing with the secretary of state and publication in the manner which the commission prescribes. Special

rules shall become effective ten (10) days after notification of or mailing to the last known address of the individuals or concerns affected thereby. Regulations shall become effective in the manner and at the time prescribed by the secretary.

- (3) The commission shall serve as an appeals board to hear and decide appeals filed in accordance with the provisions of KRS 341.430 and shall adopt regulations governing the manner of filing appeals and the conduct of hearings and appeals consistent with the provisions of this chapter.

341.116. Updating of unemployment insurance computer system.

It shall be the responsibility of the secretary to annually update and maintain the unemployment insurance mercer computerized model and to make this model available to the legislative research commission through the computer facilities of the commission.

341.125 Secretary--Powers and duties--Personnel.

- (1) It shall be the duty of the secretary to administer this chapter; and he shall have power and authority to make such expenditures, require such reports, make such investigations, and take such other action, not specifically assigned to the Cabinet for Workforce Development, as he deems necessary for the proper administration of this chapter.
- (2) The secretary is authorized, subject to the provisions of KRS chapters 12, 42, and 45, to appoint, fix the compensation and prescribe duties and powers of such officers and employees as may be necessary in the performance of his duties under this chapter. All positions shall be filled by persons selected and appointed on a non-partisan merit basis. The secretary shall not employ or pay any person who is an officer or committee member of any political party organization. The secretary may delegate to any such person so appointed such power and authority as he deems reasonable and proper for the effective administration of this chapter.
- (3) The salary and expenses of the secretary and his staff shall be considered a proper cost of the administration of this chapter, to be charged to the unemployment compensation administration fund in that proportion which the cost of such services rendered in the administration of this chapter bears to the over-all cost of the service rendered in the administration of the cabinet.
- (4) The secretary shall submit to the governor an annual report covering the administration and operation of this chapter and make such recommendations for amendments to this chapter as he deems proper.
- (5) In the administration of this chapter the secretary shall cooperate to the fullest extent possible with any agency of this state or any other state or of the United States and shall take such action, through the adoption of appropriate rules, regulations, administrative methods and standards, as may be necessary to secure for this state and its citizens all the advantages available under the provisions of the social security act, as amended, that relate to unemployment compensation, the federal unemployment tax act, as amended, the Wagner-Peyser Act, as amended, and the federal-state extended unemployment compensation act of 1970.

341.145. Reciprocal arrangements; recovery of benefit overpayments.--

- (1) The secretary may enter into arrangements with the appropriate agencies of other states or of the federal government, or both, for the purpose of assisting the secretary and such agencies in the payment of

benefits and the furnishing of services to unemployed or underemployed workers. Such arrangements may provide that the respective agencies shall, for and on behalf of each other, act as agents in effecting registrations for work, notices of unemployment, and any other certifications or statements relating to a worker's claim for benefits; in making investigations, taking depositions, holding hearings, or otherwise securing information relating to benefit eligibility and payments; and in such other matters as the secretary considers suitable in effectuating the purpose of these administrative arrangements.

(2) The secretary may enter into arrangements with the appropriate agencies of other states or the federal government whereby workers performing services in this and other states for a single employing unit under circumstances not specifically provided in KRS 341.050, or under similar provisions in the unemployment compensation laws of such other states, shall be deemed to be engaged in employment performed entirely within this state or within one (1) of such other states.

(3)(a) The secretary shall participate in any arrangements for the payment of benefits on the basis of combining an individual's wages and employment covered under this chapter with his wages and employment covered under the unemployment compensation laws of other states or the federal government which are approved by the United States secretary of labor in consultation with the state unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of benefits in such situations and which include provisions for applying the base period of a single state law to a claim involving the combining of an individual's wages and employment covered under two (2) or more state unemployment compensation laws, and avoiding the duplicate use of wages and employment by reason of such combining. Reimbursements to another state or the federal government, paid from the fund pursuant to this subsection, shall be deemed to be benefits for the purposes of this chapter and charged to contributory employers' reserve accounts and reimbursing employers' accounts in accordance with the provisions of subsections (2) and (3) of KRS 341.530 to the extent of calculations made on wages paid during the base period established by KRS 341.090 and wages paid after such base period; provided, however, benefits based on a period previous to the base-wage period established by KRS 341.090 shall be charged to the pooled account for contributing employers only. Provided, that if the secretary of labor determines that the charging of reimbursements provided above is inconsistent with the requirements of the Federal Unemployment Tax Act, charges of such reimbursements shall then be made in accordance with regulations prescribed by the secretary.

(b) In order that such reciprocal arrangements, when entered into, may be effectuated, wages for insured work under an employment security law of another state or of the federal government shall be deemed to be wages earned in covered employment from a subject employer for the purpose of determining his benefits under this chapter.

(4) Notwithstanding any other provision of this chapter, benefits shall not be denied or reduced to an individual solely because he files a claim in another state (or contiguous country with which the United States has an agreement with respect to unemployment compensation) or because he resides in another state (or such a contiguous country) at the time he files a claim for benefits.

(5) To the extent permissible under the laws and Constitution of the United States, the secretary is authorized to enter into or cooperate in arrangements or reciprocal agreements with appropriate and duly authorized agencies of other states or the U.S. secretary of labor or both, whereby:

(a) Overpayments of unemployment benefits, as determined under this chapter, shall be recoverable (after due notice and opportunity for appeal

has been provided to the claimant) by offset from unemployment benefits otherwise payable under the unemployment compensation law of another state, in either the current or any subsequent benefit year, in an amount equivalent to the amount of overpayment determined under this chapter, provided the department certifies to the other state the facts involved and that the claimant is liable to repay the benefits and the department requests the other state to recover the benefits; and

(b) Overpayments of unemployment benefits, as determined under the unemployment compensation law of another state, shall be recoverable (after such state has provided due notice and opportunity for appeal to the claimant) by offset from unemployment benefits otherwise payable under this chapter, in either the current or subsequent benefit year, in an amount equivalent to the amount of overpayment determined by such other state, provided such state certifies to the department the facts involved and that the individual is liable to repay the benefits and the state requests the department to recover the benefits; and

(c) Provided there is in effect a reciprocal agreement between this state and the U.S. secretary of labor, as authorized by section 303 (g)(2) of the Social Security Act, the overpayment of unemployment benefits or allowances for unemployment provided under a federal program administered by this state shall be recoverable by offset from benefits otherwise payable under this chapter or any such federal program. Such agreement shall also suffice to permit the offset from unemployment benefits, otherwise payable under a federal program administered by this state, the overpayment of unemployment benefits paid under this chapter. If another state also has in effect a like agreement with the U.S. secretary of labor, then these provisions for cross-offset of state and federal unemployment benefits shall apply to benefits otherwise payable under this chapter, the laws of the other state or any federal unemployment program administered by either state.

341.150. Publication of chapter.--The secretary shall cause to be printed for distribution to the public the text of this chapter, the secretary's regulations and general rules, his annual report to the governor, and any other material he deems relevant and suitable, and shall furnish the same to any person upon application therefor.

341.180. Employment stabilization.--Upon direction of the governor, the secretary with the advice and aid of the advisory councils, shall take all appropriate steps to reduce and prevent unemployment; encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; investigate, recommend, advise, and assist in the establishment and operation by cities, counties, school districts and the state, of reserves for public works to be used in times of business depression and unemployment; and to promote the employment of unemployed workers throughout the state in every feasible way, and to these ends to carry on and publish the results of investigations and research studies.

341.190. Records and reports--Confidential treatment.

- (1) Each employing unit shall keep true and accurate work records of all workers employed by it, of the wages paid by it to each worker, and such other information as the secretary for workforce development considers necessary for the proper administration of this chapter. The records shall be open for inspection and subject to being copied by the secretary or his authorized representatives at any reasonable time and as often as necessary.

- (2) The secretary for workforce development may require any employing unit to furnish to the cabinet at its central office from time to time information concerning the total amounts of wages paid, total number of persons employed, an individual record of each worker employed, an individual record of each worker whose employment has been terminated or who has been laid off, an individual wage and hour record of each worker employed part-time entitled to benefits, and other related matters, including hours worked, which the secretary for workforce development considers necessary to the effective administration of this chapter.
- (3) Information obtained from an employing unit or individual and other records made by the cabinet in the administration of this chapter are confidential and shall not be published or be open for public inspection except as provided below:
 - (a) Information may be made available to public employees in the performance of their duties, but the agency receiving the information shall assure the confidentiality, as provided for in this section, of all information so released.
 - (b) A claimant or employing unit or his legal representative shall be provided upon request information or records maintained by the cabinet in the administration of his claim, his reserve account, his reimbursing employer account, or any proceeding under this chapter to which he is a party.
 - (c) Statistical information derived from information and records obtained or made by the cabinet may be published, if it in no way reveals the identity of any claimant or employing unit.
 - (d) Nothing in this section shall preclude the secretary or any employee of the cabinet from testifying in any proceeding under this chapter or in any court, or from introducing as evidence information or records obtained or made by the cabinet in an action for violation of state or federal law to which the cabinet is a party or upon order of the court.
- (4) No information or records held confidential under subsection (3) of this section shall be the subject matter or basis for any suit for slander or libel in any court, but no employer or employee, or his representative, testifying before the commission, the secretary or any duly authorized representative thereof, shall be exempt from punishment for perjury.

341.200. Power to hear witnesses, issue subpoenas and serve process.

- (1) In the discharge of the duties imposed by this chapter members of the commission, the commissioner or any duly authorized representative thereof, may administer oaths and affirmations, take depositions, certify official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda and other records considered necessary and relevant as evidence in connection with the administration of this chapter. Such subpoena shall be served in the same manner as a subpoena issued out of a circuit court and the sheriff shall receive the same fee as provided by law for like service in civil actions. Witnesses subpoenaed shall be allowed witnesses' fees according to the rates prescribed by KRS 421.015 for each day their attendance is actually required at a hearing.
- (2) The commissioner, or any authorized representative of the commissioner, shall have the power, in any and all counties of this Commonwealth, now granted by law to sheriffs within their respective jurisdictions, to execute and make due return of all notices, summonses, including summonses duces tecum, subpoenas, and executions in respect to all court

actions instituted to enforce the provisions of this chapter. Neither the commissioner nor his authorized representative shall be deemed to be an interested party in the action by reason of his official or representative capacity.

341.210. Protection against self-incrimination.

No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda or other records before the commission or any member thereof, or the secretary or his duly authorized representative, on the ground that the evidence required of him may tend to incriminate or subject him to a penalty or forfeiture. No person shall be prosecuted or subjected to any suit, penalty, or forfeiture on account of any transaction, matter, or thing concerning which he or his agent or worker is compelled, after having claimed privilege against self-incrimination, to give evidence, except that such witness so testifying shall not be exempt from punishment for perjury.

341.220. Cooperation with other agencies.

- (1) In the administration of this chapter, the secretary shall:
 - (a) To the fullest extent consistent with the provisions of this chapter, cooperate with the federal department of labor;
 - (b) Make such reports in such form and containing such information as such agency may from time to time require;
 - (c) Comply with such provisions as such agency may from time to time find necessary to assure the correctness and verification of such reports; and
 - (d) Comply with the provisions of Title III of the Social Security Act relating to the expenditure of such funds as may be allotted and paid to this state for the purpose of assisting in the administration of this chapter.
- (2) Upon request therefor the secretary shall furnish to any agency of this or any other state of the United States charged with the administration of public works or assistance, through public employment or otherwise, the name, address, ordinary occupation and employment status of each recipient of benefits and such recipient's rights to further benefits under this chapter.
- (3) The secretary may make records relating to the administration of this chapter available to the railroad retirement board and may furnish the railroad retirement board, at the expense of that board, as many copies thereof as the board requests.
- (4) The secretary may afford reasonable cooperation, including reciprocal collection of contributions by the enforcement of foreign judgments, with every agency of any state or of the United States charged with the responsibility of administering an unemployment insurance law.
- (5) The secretary shall require employment offices in this state, upon request of a public agency administering or supervising the administration of a state plan approved under part A of Title IV of the Social Security Act or of a public agency charged with any duty or responsibility under any program or activity authorized or required under part D of Title IV of such act, shall, and, notwithstanding any other provision of law, is hereby authorized to furnish to such agency making the request, from any data contained in the files of any such employment office, information with respect to any individual specified in the request as to (a) whether such individual is receiving, has received, or has made application for unemployment compensation, and the amount of any such compensation being received by such individual;

(b) the current (or most recent) home address of such individual; and
(c) whether such individual has refused an offer of employment, and, if so, a description of the employment so offered and terms, conditions, and rate of pay therefor, provided that the secretary shall require employment offices in this state to furnish such other information as shall be required by the regulations of the secretary of health, education and welfare.

341.230. Destruction of records.

The secretary may authorize the destruction of such original reports and records as have been properly recorded and summarized in the permanent records of the Cabinet for Workforce Development or are no longer considered necessary for the proper administration of this chapter. Wage records of the individual worker or transcripts thereof may be destroyed or disposed of two (2) years after the expiration of the period covered by them or upon proof of death of the worker. Such destruction or disposition shall be made only by order of the commissioner. Any money received from the disposition of such records shall be deposited to the credit of the unemployment compensation administration fund.

341.240. Unemployment compensation administration fund.

- (1) There is hereby created in the state treasury a special fund to be known as the unemployment compensation administration fund. All money deposited or paid into this fund is hereby appropriated and shall be continuously available to the secretary for expenditure consistent with this chapter and shall not lapse at any time. A general statement that all continuing appropriations are repealed shall not be construed as repealing this section.
- (2) All money in this fund shall be expended solely to defray the cost of the administration of this chapter.
- (3) The fund shall consist of all money appropriated by this state and all money received from the United States, or any agency thereof or from any other source, for the administration of this chapter.
- (4) In order to establish and maintain free employment offices, the commission may enter into agreements with the railroad retirement board or any other agency charged with the administration of an unemployment insurance law, with any cities or other political subdivisions of this state or with any private nonprofit organization. As a party to any such agreement, the commission may accept money, service or quarters as a contribution to the unemployment compensation administration fund.

341.245. Authority to acquire office space.

Subject to the provisions of KRS 56.440 to 56.550, inclusive, the secretary is authorized and empowered to use all or any part of the funds accumulated under the provisions of KRS 341.295 for the purpose of acquiring suitable space for either central or district offices of the cabinet by way of purchase, lease, contract, or in any other manner including the right to use said funds or any part thereof to assist in financing the construction of any building erected by the Commonwealth or any of its agencies wherein available space will be provided for the cabinet under lease or contract between the cabinet and the Commonwealth or such other agency whereby said cabinet will continue to occupy such space, rent free, after the cost of the financing such building has been liquidated.

CONTRIBUTIONS

341.250. Employer's coverage; period; termination; election of liability.

- (1) Any employing unit that becomes subject to this chapter within any calendar year shall be considered a subject employer during the whole of that calendar year, except as specifically provided elsewhere in this section or this chapter.
- (2) Except as provided in subsections (3) and (5) of this section, a subject employer shall cease to be a subject employer only as of the first day of January of any calendar year if he files with the department, on or before the fifteenth day of April of that year, a written application for termination of coverage, and the covered employment performed for such subject employer within the preceding calendar year was not sufficient to render an employing unit a subject employer under KRS 341.070. The secretary may, however, after notifying such employer in writing at his last known address, terminate the coverage of any subject employer as of the first day of January of any calendar year if such subject employer has had no individuals in covered employment in this state at any time during the three (3) preceding calendar years, and the balance of such employer's reserve account may be immediately transferred to the pooled account.
- (3)
 - (a) Any employing unit not otherwise subject to this chapter that files with the department its written election to become a subject employer for not less than two (2) calendar years shall, with the written approval of such election by the secretary, become subject hereto to the same extent as all other subject employers, as of the date stated in such approval, but not with respect to the period previous to such date. Such subject employer shall cease to be subject hereto as of January 1 of any calendar year subsequent to such two (2) calendar years, only if on or before April 15 of such year, it has filed with the cabinet a written notice to that effect.
 - (b) Any employing unit for which services that do not constitute covered employment are performed may file with the department a written election that all such services performed by individuals in its employ in one (1) or more distinct establishments or places of business shall be considered to constitute covered employment by a subject employer for all the purposes of this chapter for not less than two (2) calendar years. Upon written approval of such election by the secretary, such services shall be considered to constitute covered employment from and after the date stated in such approval, but not with respect to the period previous to such date. Such services shall cease to be considered covered employment subject hereto as of January 1 of a calendar year subsequent to such two (2) calendar years, only if on or before April 15 of such year such employing unit has filed with the department a written notice to that effect.
 - (c) Any employing unit having service performed in covered employment solely by reason of paragraph (h) of subsection (1) of KRS 341.050 may terminate such service as "covered employment" as of the first day of January of any calendar year if such service does not meet the provisions of paragraphs (e), (f) or (g), but only if on or before April 15 of such year, the employing unit has filed with the department a written request to terminate service as "covered employment."
- (4) An employing unit that becomes a subject employer under subsection (7) of KRS 341.070, shall become subject as of the date of acquisition.

- (5) Notwithstanding the provisions of subsections (1), (2), and (3) of this section, any subject employer whose entire reserve account has been transferred to a successor in interest as provided for in KRS 341.540 shall immediately cease to be a subject employer and shall thereafter become a subject employer only upon his future employment experience.

341.260. Payment of contributions by employer; guarantee and liability of contractor.

- (1) Contributions shall accrue and become payable by each subject employer for each calendar year in which he is subject to this chapter. Such contributions shall be based upon wages paid during such calendar year for covered employment. Such contributions shall become due and be paid at the offices of the department in Frankfort by each subject employer to the department for the fund in accordance with such regulations as the secretary prescribes, and shall not be deducted in whole or in part from the wages of workers in his employ. In the payment of any contributions, a fractional part of a cent shall be disregarded, unless it amounts to one-half ($\frac{1}{2}$) cent or more, in which case it shall be increased to one (1) cent.
- (2) Any contractor, who is or becomes a subject employer under the provisions of this chapter, who contracts with any subcontractor, who also is or becomes a subject employer under the provisions of this chapter, shall withhold sufficient moneys on said contract to guarantee that all contributions, penalties, and interest are paid upon completion of said contract, or shall require of said subcontractor a good and sufficient bond guaranteeing payment of all contributions, penalties and interest due, or to become due with respect to wages paid for employment on said contract. Failure to comply with the provisions of this section shall render said contractor directly liable for such contributions, penalties and interest due from said subcontractor and the wages paid by said subcontractor shall be deemed wages paid by the said contractor with respect to the same periods for all purposes under this chapter, and liens of the same nature are attachable and enforceable in the same manner as liens under KRS 341.310 and 341.315.
- A person, employing unit, or entity that enters into a verbal or written agreement with another, or between which there exists an implied contract based upon the circumstances, conduct, or acts or relations of the parties:
- (a) To have work performed consisting of the removal, excavation or drilling of soil, rock or mineral, or the cutting or removal of timber from land, or
- (b) To have work performed of a kind which is a customary or a recurrent part of the work of the trade, business, occupation or profession of such person or entity, shall for the purposes of this subsection be deemed a contractor, and such other person or entity a subcontractor. This subsection shall not apply to the owner or lessee of land principally used for agriculture.

341.262. Penalties for failure to file reports.

- (1) Any employing unit failing to make and file reports required under this chapter on or before the due date of such reports shall be subject, in addition to any other penalty provisions in this chapter to a penalty of twenty-five dollars (\$25.00) for failure to file such reports. Failure to file such reports by the last day of the month following the due date shall result in an additional penalty of fifty dollars (\$50.00) being imposed upon the employing unit.

- (2) The penalties provided for in subsection (1) of this section apply to the first failure of an employing unit to timely make and file required reports during a calendar year. If during the same calendar year the employing unit is again untimely in the making and filing of a like report, the employing unit shall be subject to the penalties provided for in subsection (1) of this section plus an additional penalty of one hundred dollars (\$100).
- (3) The penalties provided for in subsections (1) and (2) of this section shall be collected in the same manner as provided for in KRS 341.300 and shall be paid into the same fund.

341.263. Estimated reports and assessments.

If any employer fails to file reports when due, or files an incorrect or insufficient report, the secretary may, after an investigation, determine such employer's liability and assess the contributions due on the basis of an estimate of such employer's payroll, and shall give written notice of such assessment to such employer. Such determination or assessment shall become final twenty (20) days after such notice was mailed to the employer's last known address unless an appeal is initiated under KRS 341.430. After such determination or assessment shall have become final as herein provided, it shall be received in evidence in all courts of this commonwealth as conclusive of the amount owing the commonwealth in respect to the claim or claims concerning which the determination shall have been made.

341.265. Remedies for failure to report.

- (1) Any employing unit refusing to make reports required under this chapter within ten (10) days after written notice sent by the cabinet to such employing unit's last known address by certified mail, notifying such employing unit that this section will be invoked unless such reports are filed, may be restrained or enjoined from continuing in business in this state or employing persons herein until such reports have been made.
- (2) Any employing unit actively engaged in business in this state which is found delinquent in the payment of contributions by the cabinet may, after ten (10) days' written notice by the cabinet sent to such employing unit's last known address by certified mail notifying such employing unit that this section will be invoked unless such delinquency is satisfied, be restrained or enjoined from continuing in business in this state or employing persons herein until such delinquency has been satisfied or until such employing unit shall have furnished bond with surety approved by the court in a sum equal to the amount of such delinquency, plus any other unpaid contributions due under this chapter and such further sum as the court shall deem adequate to protect the cabinet in the collection of contributions which may become due for the next ensuing six (6) months, said bond to be conditioned upon payment of such judgment and contributions upon such terms and at such time as the court may fix.
- (3) Proceedings under the provisions of this section may be instituted upon complaint filed by the division in the Franklin Circuit Court or any other court of competent jurisdiction in accordance with Kentucky Rules of Civil Procedure, except that no bond shall be required of the commonwealth or the cabinet.

341.270. Determination of employer's contribution rate.

- (1) Except as otherwise provided in this section, each employer's contribution rate shall be three percent (3.0%).
- (2) No subject employer's contribution rate shall be less than three percent (3.0%), unless he has been an employer subject to the provisions of this chapter for twelve (12) consecutive calendar quarters ended as of the computation date.
- (3) For the calendar year 1982 and each calendar year thereafter, employer contribution rates shall be determined in accordance with "Table A" set out in subsection (4) of this section. For each calendar year, the secretary shall determine the rate schedule to be in effect based upon the "trust fund balance" as of December 31 of the preceding year. If such "trust fund balance":
 - (a) Equals or exceeds three hundred fifty million dollars (\$350,000,000), the rates listed in "Schedule A" of "Table A" shall be in effect.
 - (b) Equals or exceeds two hundred seventy-five million dollars (\$275,000,000) but is less than three hundred fifty million dollars (\$350,000,000), the rates listed in "Schedule B" of "Table A" shall be in effect.
 - (c) Equals or exceeds two hundred fifty million dollars (\$250,000,000) but is less than two hundred seventy-five million dollars (\$275,000,000), the rates listed in "Schedule C" of "Table A" shall be in effect.
 - (d) Equals or exceeds one hundred fifty million dollars (\$150,000,000) but is less than two hundred fifty million dollars (\$250,000,000), the rates listed in "Schedule D" of "Table A" shall be in effect.
 - (e) Is less than one hundred fifty million dollars (\$150,000,000), the rates listed in "Schedule E" of "Table A" shall be in effect.
- (4) For the calendar year 1982 and each calendar year thereafter, contribution rates shall be determined upon the basis of an individual employer's reserve ratio as of the computation date and the schedule of rates established under subsection (3) of this section. Except as otherwise provided in this section, the contribution rate for each subject employer for the calendar year immediately following the computation date shall be the rate in that "Schedule" of "Table A," as set out below, effective with respect to such calendar year, which appears on the same line as his reserve ratio as shown in the "Employer Reserve Ratio" column of the same table.
- (5) As used in this section and elsewhere in this chapter, unless the context clearly requires otherwise:
 - (a) "Trust fund balance" means the amount of money in the unemployment insurance fund, less any unpaid advances made to the state under Section 1201 of the Social Security Act. In determining the amount in the fund as of a given date all money received by the cabinet as of such date shall be considered as being in the fund on such date.
 - (b) "Total wages" means all remuneration for services, as defined in subsections (1) to (7) of KRS 341.030, paid by subject employers.
 - (c) An employer's "reserve ratio" means the percentage ratio of his reserve account balance as of the computation date to his taxable payrolls for the twelve (12) consecutive calendar quarters ended as of September 30 immediately preceding the computation date.
 - (d) For the purposes of this section, an employer's "reserve account balance" means the amount of contributions credited to his reserve account as of the computation date, less the benefit charges through September 30 immediately preceding the computation date. If benefits charged to an account exceed contributions credited to

- such account, such account shall be considered as having a debit balance and a reserve ratio of "less than zero."
- (e) "Computation date" is October 31 of each calendar year prior to the effective date of new rates of contributions.

TABLE A
Rate Schedule

Reserve Ratio	A	B	C	D	E
8.0% and over	0.30%	0.40%	0.50%	0.60%	1.00%
7.0% but under 8.0%	0.40%	0.50%	0.60%	0.80%	1.05%
6.0% but under 7.0%	0.50%	0.60%	0.70%	0.90%	1.10%
5.0% but under 6.0%	0.70%	0.80%	1.00%	1.20%	1.40%
4.6% but under 5.0%	1.00%	1.20%	1.40%	1.60%	1.80%
4.2% but under 4.6%	1.30%	1.50%	1.80%	2.10%	2.30%
3.9% but under 4.2%	1.50%	1.70%	2.20%	2.40%	2.70%
3.6% but under 3.9%	1.80%	1.80%	2.40%	2.60%	3.00%
3.2% but under 3.6%	2.00%	2.10%	2.50%	2.70%	3.10%
2.7% but under 3.2%	2.10%	2.30%	2.60%	2.80%	3.20%
2.0% but under 2.7%	2.20%	2.50%	2.70%	2.90%	3.30%
1.3% but under 2.0%	2.30%	2.60%	2.80%	3.00%	3.40%
0.0% but under 1.3%	2.40%	2.70%	2.90%	3.10%	3.50%
-0.5% but under -0.0%	6.50%	6.75%	7.00%	7.25%	7.50%
-1.0% but under -0.5%	6.75%	7.00%	7.25%	7.50%	7.75%
-1.5% but under -1.0%	7.00%	7.25%	7.50%	7.75%	8.00%
-2.0% but under -1.5%	7.25%	7.50%	7.75%	8.00%	8.25%
-3.0% but under -2.0%	7.50%	7.75%	8.00%	8.25%	8.50%
-4.0% but under -3.0%	7.75%	8.00%	8.25%	8.50%	8.75%
-6.0% but under -4.0%	8.25%	8.50%	8.75%	9.00%	9.25%
-8.0% but under 6.0%	8.50%	8.75%	9.00%	9.25%	9.50%
Less than -8.0%	9.00%	9.25%	9.50%	9.75%	10.00%

341.272. Contribution rate of new employer engaged in contract construction trades.

- (1) Notwithstanding any section of this chapter to the contrary, on or after July 15, 1984, any new domestic corporation, or any foreign corporation authorized to do business in this state, or any foreign corporation active in conjunction with a domestic corporation in a joint venture, partnership or other legal entity engaged in the contract construction trades shall pay contributions equal to the maximum rate of contributions payable under the rate schedule in effect for any given calendar year as determined by KRS 341.270; and, such maximum rate of contributions shall remain in effect until the employer has employed persons in this state for not less than twelve (12) consecutive calendar quarters ending as of September 30 immediately preceding the computation date. Thereafter, such employer's contribution rate shall be determined in accordance with the provisions of subsection (4) of KRS 341.270.
- (2) On or after January 1, 1989, any new domestic or foreign proprietorship or partnership engaged in the contract construction trades shall be subject to the provisions of subsection (1) of this section.

341.275. Financing benefits for nonprofit organizations.

- (1) For the purpose of this section, a nonprofit organization is an organization (or group of organizations) described in section 501(c)(3) of the U.S. Internal Revenue Code which is exempt from income tax under section 501(a) of such code. For the purpose of this section "cabinet" shall mean the Cabinet for Workforce Development and "secretary" shall mean the secretary for workforce development.
- (2) Any nonprofit organization which, pursuant to KRS 341.070(4), is, or becomes, a subject employer shall pay contributions under the provisions of KRS 341.270, unless it elects, in accordance with this section, to pay to the cabinet for the fund an amount equal to the amount of regular benefits and of one-half (½) of the extended benefits paid to workers for weeks of unemployment that is attributable to service in the employ of the nonprofit organization, performed during the effective period of the election but only if the employer is the worker's most recent employer. No employer shall be deemed to be the most recent employer unless the eligible worker to whom benefits are payable shall have worked for that employer in each of ten (10) weeks whether or not consecutive.
 - (a) Any nonprofit organization which is, or becomes, a subject employer on July 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than the remainder of 1972 and the calendar year of 1973, provided it files with the cabinet a written notice of its election within the thirty-day period immediately following such date.
 - (b) Any nonprofit organization which becomes a subject employer after July 1, 1972 may elect to become liable for payments in lieu of contributions for a period of not less than the period of subjectivity during the year in which such subjectivity begins and the following calendar year by filing a written notice of its election with the cabinet not later than thirty (30) days immediately following the date of the determination of such subjectivity.
 - (c) Any nonprofit organization which makes an election in accordance with paragraph (a) or paragraph (b) of this subsection will continue to be liable for payments in lieu of contributions until it files with the secretary a written notice terminating its

- election not later than thirty (30) days prior to the beginning of the calendar year for which such termination shall first be effective except that the liability for payments in lieu of contributions shall continue thereafter with respect to wages paid prior to the effective date of such termination.
- (d) Any nonprofit organization which has been paying contributions under this chapter for a period subsequent to July 1, 1972 may change to a reimbursable basis by filing with the cabinet not later than thirty (30) days prior to the beginning of any calendar year a written notice of election to become liable for payments in lieu of contributions. Such election shall not be terminable by such organization for that and the following year.
 - (e) The secretary may for good cause extend the period within which a notice of election, or a notice of termination, must be filed and may permit an election to be retroactive but not any earlier than with respect to benefits paid after December 31, 1969.
 - (f) The secretary shall notify each nonprofit organization of any determination which may be made of its status as an employer and of the effective date of any election which it makes and of any termination of such election. Such determinations shall be subject to appeal and review in accordance with the provisions of KRS 341.430(2).
- (3) Payments in lieu of contributions shall be made in accordance with the provisions of this subsection.
- (a) At the end of each calendar quarter the cabinet shall bill each nonprofit organization (or group of such organizations) which has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits plus one-half ($\frac{1}{2}$) of the amount of extended benefits paid during such quarter plus any prior period adjustments, which are attributable to service performed in covered employment in the employ of such organization.
 - (b) Payment of any bill rendered under paragraph (a) shall be made not later than thirty (30) days after such bill was mailed to the last known address of the nonprofit organization or was otherwise delivered to it, unless there has been an application for review in accordance with paragraph (d) of this subsection.
 - (c) Payments made by any nonprofit organization under the provisions of this subsection shall not be deducted or deductible, in whole or in part, from the remuneration of workers in the employ of the organization.
 - (d) The amount due specified in any bill from the secretary shall be conclusive on the organization unless, not later than fifteen (15) days after the bill was mailed to its last known address or otherwise delivered to it, the organization files an appeal to the cabinet, setting forth the grounds for such appeal. Proceedings on appeal to the cabinet from the amount of a bill rendered under this subsection shall be in accordance with the provisions of KRS 341.430 and the decision of the cabinet shall be subject to review under the provisions of KRS 341.460(1).
 - (e) Past-due payments of amounts in lieu of contributions shall be subject to the same interest, penalties, collection service and lien provisions that, pursuant to KRS 341.300 through 341.310, apply to past-due contributions.
- (4)
- (a) The secretary may, in accordance with regulations prescribed by the cabinet, require any nonprofit organization that elects to become liable for payments in lieu of contributions to deposit

with the cabinet, within thirty (30) days after the effective date of its election as a condition thereof, money equal to two percent (2%) of the organization's total wages paid for employment as defined in KRS 341.050(1)(e) for the four (4) calendar quarters immediately preceding the effective date of such election. If the nonprofit organization did not pay wages in each of such four (4) calendar quarters, the amount of the deposit shall be as determined by the secretary.

- (b) Money deposited in accordance with this subsection shall be retained by the cabinet in an escrow account until all possible liability to the fund under the election is terminated, at which time it shall be returned to the organization, less any deductions as hereinafter provided. The cabinet may deduct from the money deposited under this subsection by a nonprofit organization to the extent necessary to satisfy any due and unpaid payments in lieu of contributions and any applicable interest and penalties provided for in paragraph (e) of subsection (3) of this section. The secretary shall require the organization within thirty (30) days following any deduction from a money deposit under the provisions of this subsection to deposit sufficient additional money to make whole the organization's deposit at the prior level. The secretary may, at any time, review the adequacy of the deposit made by any organization. If, as a result of such review, he determines that an adjustment is necessary, he shall require the organization to make additional deposit within thirty (30) days of written notice of his determination or shall return to it such portion of the deposit as he no longer considers necessary, whichever action is appropriate.
- (c) If any nonprofit organization fails to make a deposit, or to increase or make whole the amount of a previously made deposit, as provided under this subsection, the secretary may terminate such organization's election to make payments in lieu of contributions and such termination shall continue for not less than the remainder of that calendar year and the following calendar year beginning with the quarter in which such termination becomes effective; provided, that the secretary may extend for good cause the applicable filing, deposit or adjustment period by not more than sixty (60) days.
- (5) If any nonprofit organization is delinquent in making payments in lieu of contributions as required under subsection (3) of this section, the secretary may terminate such organization's election to make payments in lieu of contributions as of the beginning of the next calendar year, and such termination shall be effective for that and the next calendar year.
- (6) Notwithstanding any other section of this chapter, no employing unit electing to make payments in lieu of contributions under the provisions of this section shall be entitled to relief of benefit charges.

341.277. Financing benefits for employees of governmental entities.

- (1) Any governmental entity which, pursuant to KRS 341.070(3), is or becomes a subject employer shall pay contributions under the provisions of KRS 341.270, unless it elects, in accordance with this section, to pay the cabinet for the fund an amount equal to the amount of all regular benefits plus all extended benefits paid to workers for compensable weeks of unemployment occurring on or after January 1, 1979 and for all regular benefits and one-half ($\frac{1}{2}$) of extended benefits paid to workers for compensable weeks of unemployment occurring prior to

such date that is attributable to service performed in covered employment in the employ of such governmental entity during the effective period of such election but only if the employer is the worker's most recent employer. No employer shall be deemed to be the most recent employer unless the eligible worker to whom benefits are payable shall have worked for that employer in each of ten (10) weeks whether or not consecutive.

- (a) Any governmental entity, which is or becomes a subject employer, may elect to become liable for payment in lieu of contributions for a period of not less than the calendar year in which such subjectivity begins and for the following calendar year provided it files with the cabinet a written notice of its election within thirty (30) days immediately following the date of the determinations of such subjectivity; or
 - (b) Any governmental entity which has paid contributions under the provisions of KRS 341.270 may change to a reimbursable basis by filing with the cabinet a written notice of its election not later than thirty (30) days prior to the beginning of any calendar year to make payments in lieu of contributions for a period of not less than two (2) calendar years following the effective date of such election.
 - (c) Any governmental entity which elects to make payments in lieu of contributions, in accordance with paragraphs (a) or (b) of this subsection, shall continue to be liable for payments in lieu of contributions until it files with the secretary a written notice terminating its election not later than thirty (30) days prior to the beginning of the calendar year for which such termination shall become effective except that liability for payments in lieu of contributions shall continue thereafter with respect to wages paid prior to the effective date of such termination.
 - (d) The secretary may for good cause extend the period within which a notice of election must be filed and may permit the effective date of such election to be retroactive.
 - (e) The secretary shall notify each governmental entity of any determination made as to its status as a subject employer, pursuant to KRS 341.070 and the effective date of any election or termination made pursuant to this subsection which determinations shall be subject to appeal and review in accordance with the provisions of KRS 341.430(2).
- (2) Payment in lieu of contributions shall be made in accordance with the provisions of this subsection.
- (a) At the end of each quarter, the cabinet shall bill each governmental entity (or group of governmental entities) which has elected to make payments in lieu of contributions an amount equal to all regular benefits and all extended benefits paid during such quarter for compensable weeks occurring on or after January 1, 1979, plus any prior period adjustments which are attributable to service performed in covered employment in the employ of such governmental entity.
 - (b) Payment of any bill rendered under paragraph (a) shall be made not later than thirty (30) days after such bill was mailed to the last known address of the governmental entity or was otherwise delivered to it, unless there has been an application for review in accordance with paragraph (d) of this subsection.
 - (c) Payments made by any governmental entity under the provisions of this subsection shall not be deducted or deductible, in whole or in part, from the remuneration of workers in the employ of the governmental entity.

- (d) The amount due specified in any bill from the secretary shall be conclusive on the governmental entity unless, not later than fifteen (15) days after the bill was mailed to its last known address or otherwise delivered to it, the governmental entity files an appeal to the commission, setting forth the grounds for such appeal. Proceedings on appeal to the commission from the amount of a bill rendered under this subsection shall be in accordance with the provisions of KRS 341.430 and the decision of the commission shall be subject to review under the provisions of KRS 341.460(1).
 - (e) Past due payments of amounts in lieu of contributions shall be subject to the same interest, penalties, and collection provisions that, pursuant to KRS 341.300, apply to past due contributions.
- (3)
- (a) The secretary may, in accordance with regulations prescribed by the commission, require any governmental entity that elects to become liable for payments in lieu of contributions to deposit with the cabinet within thirty (30) days after the effective date of its election as a condition thereof, money equal to two percent (2%) of the governmental entity's total wages paid for employment as defined in KRS 341.050(1)(d) for the four (4) calendar quarters immediately preceding the effective date of such election. If the entity did not pay wages in each of such four (4) quarters, the amount of deposit, if required, shall be determined by the secretary.
 - (b) Provided, however, that the amount of money required to be deposited under this paragraph shall not exceed the amount for which any contributing employer would be liable if subject to the maximum contribution rate applicable to the annual taxable payroll.
 - (c) Money deposited in accordance with this subsection shall be retained by the cabinet in an escrow account until all possible liability to the fund under the election is terminated, at which time it shall be returned to the governmental entity, less any deductions as hereinafter provided. The cabinet may deduct from the money deposited under this subsection by a governmental entity to the extent necessary to satisfy any due and unpaid payments in lieu of contributions and any applicable interest and penalties provided for in paragraph (e) of subsection (2) of this section. The secretary shall require the governmental entity within thirty (30) days following any deduction from a money deposit under the provisions of this subsection to deposit sufficient additional money to make whole the governmental entity's deposit at the prior level. The secretary may, at any time, review the adequacy of the deposit made by any governmental entity. If, as a result of such review, he determines that an adjustment is necessary, he shall require the governmental entity to make an additional deposit within thirty (30) days of written notice of his determination or shall return to it such portion of the deposit as he no longer considers necessary, whichever action is appropriate.
 - (d) If any governmental entity fails to make a deposit, or to increase or make whole the amount of a previously made deposit, as provided under this subsection, the secretary may terminate such governmental entity's election to make payments in lieu of contributions and such termination shall continue for not less than the remainder of that calendar year and the following calendar year beginning with the quarter in which such termination becomes effective; provided, that the secretary may extend for

good cause the applicable filing, deposit or adjustment period by not more than sixty (60) days.

- (4) If any governmental entity is delinquent in making payments in lieu of contributions as required under subsection (3) of this section, the secretary may terminate such governmental entity's election to make payments in lieu of contributions as of the beginning of the next calendar year, and such termination shall be effective for that and the next calendar year.
- (5) Notwithstanding any other section of this chapter, no employing unit electing to make payments in lieu of contributions under the provisions of this section shall be entitled to relief of benefit charges.

341.281. Allocation of benefit cost to reimbursing employers.

- (1) Each nonprofit organization that has elected to make payments in lieu of contributions under KRS 341.275 shall pay to the cabinet for the fund the amount of regular benefits plus the amount of one-half ($\frac{1}{2}$) of extended benefits paid that are attributable to service performed in covered employment in the employ of such nonprofit employer. Each governmental entity that has elected to make payments in lieu of contributions under the provisions of KRS 341.277 shall pay to the cabinet for the fund the amount of all regular benefits plus all extended benefits paid for compensable weeks occurring after January 1, 1979 attributable to service performed in covered employment.
- (2) Two (2) or more employers that have become liable for payment in lieu of contributions, in accordance with the provisions of KRS 341.275, may file a joint application to the secretary for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of such employers. Each such application shall identify and authorize a group representative to act as the group's agent for the purposes of this subsection. Upon his approval of the application, the secretary shall establish a group account for such employers effective as of the beginning of the calendar quarter in which he receives the application and shall notify the group's representative of the effective date of the account. Such account shall remain in effect for not less than two years and thereafter until terminated at the discretion of the secretary or upon application by the group. Upon establishment of the account, each member of the group shall be jointly and severally liable for payment to the fund in lieu of contributions with respect to each calendar quarter in an amount equal to the total benefits paid in such quarter that are attributable to service performed in the employ of any or all members of the group. The secretary shall prescribe such procedures as he deems necessary with respect to applications for establishment, maintenance and termination of group accounts that are authorized by this subsection, for addition of new members to, and withdrawal of active members from, such accounts and for the determination of the amounts that are payable under this subsection and the time and manner of such payments.
- (3) Two (2) or more governmental entities that have become liable for payment in lieu of contributions, in accordance with the provisions of KRS 341.277, may file a joint application to the secretary for the establishment of a group account of governmental entities subject to all of the provisions of subsection (2) of this section.

341.282. Financing benefits for state employees.

The amount payable to meet the Commonwealth's obligation as an employer under this chapter shall be paid from the general fund of the state or such other administrative funds as might properly be designated by the secretary of the finance and administration cabinet or successor thereto.

341.285. Transition provision.

- (1) Notwithstanding any provisions of KRS 341.275 or 341.282, any nonprofit organization that prior to January 1, 1969, paid contributions required by this chapter, and, pursuant to subsection (1) of KRS 341.275 elects, within thirty (30) days after July 1, 1972, to make payments in lieu of contributions, and any state instrumentality that prior to July 1, 1972, paid contributions required by this chapter, and pursuant to KRS 341.282 is required to make payments in lieu of contributions, shall not be required to make any such payment on account of any regular or extended benefits paid, on the basis of wages paid by such organization or instrumentality to workers for weeks of unemployment which begin on or after the effective date of such election or requirement until the total amount of such benefits equals the amount of the positive balance in the reserve account of such organization or instrumentality.
- (2) Any nonprofit organization that paid contributions prior to October 20, 1976, and has continued payment of contributions through December 31, 1978 as a subject employer and which was not required to be a subject employer prior to January 1, 1979 under section 3309 of the Internal Revenue Code which elects, within thirty (30) days after January 1, 1979, when such election first becomes available under KRS 341.275, to make payments in lieu of contributions shall not be required to make such payments for benefits paid on or after the effective date of such election until the total amount of such benefits equals the amount of the positive balance in the reserve account of such organization. Notwithstanding the provisions of KRS 341.530, benefit payments made on or after the effective date of an election made under this subsection, attributable to wages paid for services performed in covered employment prior to the effective date of such election, shall be treated as payments in lieu of contributions.

341.295. Unemployment compensation administration fund.

- (1) All fines, penalties and interest on delinquent contributions collected under KRS 341.300 shall be credited to the unemployment compensation administration fund to be used for the payment of interest on advances under Title XII of the Social Security Act and for the administration of this chapter. The state treasurer shall maintain a separate record of all money received for the unemployment compensation administration fund under this section. This money shall not be expended or available for expenditure in any manner that would permit its substitution for, or a corresponding reduction in, federal funds that would be available in its absence to finance expenditures for the administration of this chapter.
- (2) But nothing in this chapter shall prevent this money from being used as a revolving fund to cover necessary and proper expenditures for which federal funds have been requested but not received, subject to the charging of such expenditures against such funds when received, or to supplement federal funds which are, in the opinion of the secretary, insufficient to properly administer this chapter; provided, no more than twenty-five percent (25%) of the balance of this account may be used in any year for the purposes authorized under this subsection if

interest on advances under Title XII of the Social Security Act is due and owing.

- (3) If interest on advances under Title XII of the Social Security Act is not due and owing the secretary may also authorize to be charged against such money any expenditures he deems proper and desirable for the administration of this chapter and replace any money necessary under the provisions of KRS 341.610, if no other funds are available or can properly be used to finance such expenditures. The money heretofore collected and credited to the unemployment compensation contingent fund shall be transferred to the unemployment compensation administration fund and shall be available for expenditure under the provisions of this section.

341.296. Investment of administration fund.

Such money in the unemployment compensation administration fund collected under KRS 341.295, shall be invested by the state treasurer in bonds and other interest-bearing obligations of the United States of America, in such amounts, and in such of the securities herein authorized, as the secretary may in his discretion prescribe and direct; Provided, however, such fund as may be accumulated under the above section may be invested by the sinking fund commission, upon the request of the secretary, in revenue bonds issued by the state property and buildings commission. The state treasurer shall dispose of securities or other property belonging to such fund only under the direction of the secretary.

341.300. Interest on unpaid contributions; collection of contributions, interest or penalties.

- (1) Contributions unpaid on the date on which they are due and payable, as prescribed by the secretary, shall be subject to interest at the rate of one and five-tenths percent (1.5%) per month or fraction thereof, not to exceed ninety percent (90%) of the amount of such contributions, from and after such date until payment is received by the cabinet, irrespective of whether such delinquency has been reduced to a judgment or not as provided in subsection (2) of this section or is the subject of an administrative appeal or court action. Such interest shall be paid into the unemployment compensation administration fund.
- (2) If, after due notice, any subject employer defaults in any payment of contributions, interest or penalties thereon, the amount due shall be collected by a civil action instituted in the Franklin Circuit Court or the Franklin District Court depending upon the jurisdictional amount in controversy including interest and penalties in the name of the state, and the subject employer adjudged in default shall pay the costs of the action. Civil actions brought under this section shall be heard by the court, without the intervention of a jury, at the earliest possible date, and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this chapter and cases arising under the workers' compensation law.
- (3) At or after the commencement of an action under subsection (2) of this section attachment may be had against the property of the liable subject employer for such contributions, interest and penalties without the execution of a bond, or after judgment has been entered an execution may be issued against the property of such employer without the execution of a bond.
- (4) An action for the recovery of contributions, interest or penalties under this section shall be barred and any lien therefor shall be

canceled and extinguished unless collected or suit for collection has been filed within five (5) years from the due date of such contributions, except in the case of the filing of a false or fraudulent report the contributions due shall not be barred and may at any time be collected by the methods set out in this chapter, including action in a court of competent jurisdiction.

341.301. Penalty for payment with non-negotiable instrument.

- (1) If any check tendered to the cabinet in payment of any contribution or penalty due under this chapter or as restitution for the overpayment of benefits is not paid when presented to the drawee bank for payment, there shall be paid as a penalty by the party who tendered the check, upon notice and demand of the cabinet, an amount equal to ten percent (10%) of such check. The penalty under this section shall not be less than ten dollars (\$10.00) or more than one hundred dollars (\$100).
- (2) If the party who tendered the check demonstrates to the cabinet's satisfaction that failure to pay the check resulted from error by other parties, then the cabinet shall waive the penalty.
- (3) Penalties collected under this section shall be credited to the unemployment compensation administration fund.

341.305. Service of notice or process and action against nonresident employing unit or resident employing unit removing from state.

Any employing unit which is not a resident of this state and which exercises the privilege of having one (1) or more individuals perform service for it within this state, and any resident employing unit which exercises that privilege and thereafter removes from this state, shall be deemed thereby to appoint the secretary of state as its agent and attorney for the acceptance of process in any civil action, as provided in KRS 341.300 and 341.310. In instituting such an action against any such employing unit the secretary shall cause such process or notice to be filed with the secretary of state and such service shall be sufficient service upon such employing unit, and shall be of the same force and validity as if served upon it personally within this state; Provided, That, the secretary shall forthwith send notice of the service of such processor notice, together with a copy thereof, by certified mail, return receipt requested, to such employing unit at its last known address and such return receipt, the secretary's affidavit of compliance with the provisions of this section, and a copy of the notice of service shall be appended to the original of the process filed in the court in which such action is pending.

341.310. Lien on employer's property for contributions.

- (1) A lien on a parity with state, county, and municipal ad valorem tax liens, and superior to the lien of any mortgage or other encumbrance heretofore or hereafter created is hereby created in favor of the cabinet upon all property of any subject employer from whom contributions, interest or penalties are or may hereafter become due. The lien shall commence from such time as any assessment becomes delinquent and it shall continue until the amount of the original assessment and any subsequent assessments of liability for contributions, interest, penalties or fees are fully paid. The lien shall attach to all interest in property, either real or personal, then owned or subsequently acquired by the person against whom the assessment is made. The cabinet may file notice of the lien with the county clerk of any county or counties in which the subject employer's

business or residence is located, or in any county in which the subject employer has interest in property and such notice shall be recorded in the same manner as notices of lis pendens are and the file shall be designated "miscellaneous state tax liens." Such recordation shall constitute notice of both the original assessment and all subsequent assessments of liability against the same subject employer. Upon request, the cabinet shall disclose the specific amount of liability at a given date to any interested party legally entitled to such information. The notice, when so filed, shall be conclusive notice to all persons of the lien on the property having legal situs in that county, except that nothing in this chapter shall be construed to alter or change in any way the law relative to the rights and duties of a holder in due course as provided in KRS Chapter 335, Art. 3, or affect the rights of any person taking the property or a lien thereon for value without actual or constructive notice. The clerk shall be entitled to a fee of five dollars (\$5) for filing the lien, and said fee shall become part of the lien as an added cost of the delinquent subject employer to be paid by him as a part of the amount necessary to release the lien and shall not be the responsibility of the Commonwealth.

- (2) In addition and as an alternative to any other remedy, the secretary may enforce the lien by petition in the name of this state to the Franklin Circuit Court, if the ministerial acts necessary to enforce the lien by the sale of the lien property or any part of it are performed by the appropriate officers of the circuit court of the county in which the property is situated under the direction of and reporting to the Franklin Circuit Court. The manner of enforcement shall be the same as that provided for the enforcement of other tax liens.
- (3)
 - (a) The secretary may issue a certificate of release of lien upon the furnishing of a corporate surety bond satisfactory to the secretary by such employing unit in the amount of one hundred twenty-five percent (125%) of the sum of such contributions, interest and penalty, for which lien is claimed, conditioned upon the prompt payment of such contribution, together with interest and penalty thereon, by such employing unit to the cabinet in accordance with the provisions set forth in such bond.
 - (b) The secretary may issue a certificate of partial release of any part of the property subject to the lien if he finds that the fair market value of that part of such property remaining subject to the lien is at least equal to the amount of all other liens upon such property plus double the amount of the liability for contributions, interest and penalties thereon remaining unsatisfied.
 - (c) The secretary may issue a certificate of partial release of any part of the property or individual piece of property subject to the lien if he finds that the interest of the Commonwealth in the property to be so released has no value.

341.315. Lien on building for contributions due by reason of labor performed--Procedure.--A lien of the same nature and upon the same property and having the same force, effect and priorities as that created by KRS 376.010 and 376.140 in favor of persons performing labor is hereby created in favor of the cabinet to secure the payment of contributions and interest accruing by reason of the labor performed by the persons. Notice of the lien shall be filed and the lien may be enforced in the same manner and within the same time after the last contributions became due as is

provided for filing and enforcing the liens created in KRS 376.010 and 376.140.

341.317. Bond of public works contractor

- (1) Before any contract, exceeding two thousand dollars (\$2,000) in amount, is awarded to any person for the construction, alteration, or repair of any public building or public work of the commonwealth of Kentucky, or any subdivision, county or municipality thereof, such person shall furnish to the contracting agency, county or municipality a payment bond with satisfactory surety, which shall become binding upon the award of the contract to such person, to assure the payment of all contributions under this chapter incurred by such person incident to his performance of such contract.
- (2) Nothing in this section shall be construed to limit the authority of any contracting agency, county or municipality to require such other bonds or security as might be elsewhere authorized or deemed desirable.

341.330. Adjustment or refund to employing unit.

- (1) Not later than five (5) years after the date on which any contributions, interest or penalties were paid, an employing unit which has paid such contributions, interest or penalties may make application for an adjustment in connection with subsequent contribution payments, or for a refund thereof because such adjustment cannot be made; except that no such application may be made in connection with any payment made as a result of any administrative determination affecting that employing unit's liability, contribution rate, or amount of contributions where no application for review by the commission was made as provided in subsection (2) of KRS 341.430, or where such review was made but no such adjustment was determined by the commission to be due.
- (2) If such contributions, interest or penalties or any portion thereof were erroneously collected, the employing unit shall be allowed to make an adjustment thereof, without interest, in connection with subsequent contribution payments by it; or, if such adjustment cannot be made, such amount shall be refunded, without interest, from the funds into which such contributions, interest or penalties were paid.
- (3) For like cause and within the same period, adjustment or refund may be so made by the secretary on his own initiative.

BENEFITS

341.350. Conditions of qualification for benefits.

An unemployed worker shall, except as provided in KRS 341.360 and 341.370, be eligible for benefits with respect to any week of unemployment only if:

- (1) He has made a claim for benefits;
- (2)
 - (a) He has registered for work with respect to such week in accordance with regulations prescribed by the secretary; and
 - (b) Participates in reemployment services, such as job search assistance services, if pursuant to a profiling system established by the secretary, he has been determined to be likely to exhaust regular benefits unless:
 1. The claimant has completed the services to which he is referred; or

2. There is justifiable cause for the claimant's failure to participate in the services. For the purpose of this section, "justifiable cause" shall be interpreted to mean what a reasonable person would do in like circumstances;
- (3) He is physically and mentally able to work;
 - (4) He is available for suitable work, and making such reasonable effort to obtain work as might be expected of a prudent person under like circumstances;
 - (5) His base-period wages in that calendar quarter of his base period in which such wages were highest are equal to at least seven hundred and fifty dollars (\$750), and his total base-period wages are not less than one and one-half (1½) times the base-period wages paid to him in such quarter and he was paid base-period wages in the last six (6) months of his base period equal to at least eight (8) times his weekly benefit rate with a minimum of seven hundred and fifty dollars (\$750) earned outside the high quarter;
 - (6) An otherwise eligible worker shall not be denied benefits under subsection (4) of this section or because of his failure to actively seek work, nor disqualified under paragraph (a) of subsection (1) of KRS 341.370 with respect to any week he is in training with the approval of the secretary.
 - (7) Notwithstanding any other provisions of this chapter, no otherwise eligible worker shall be denied benefits for any week because he is in training approved under 19 U.S.C. 2296 (Section 236(a)(1) of the Trade Act of 1974), nor shall such worker be denied benefits by reason of leaving work to enter such training provided such work is not suitable employment, or because of the application to any such week in training of provisions in this law (or any applicable federal unemployment compensation law) relating to availability for work, active search for work, or refusal to accept work. For purpose of this subsection, the term "suitable employment" shall mean employment of a substantially equal or higher skill level than the worker's past adversely affected employment as defined in 19 U.S.C. 2319 (Trade Act of 1974), and wages for such work are not less than eighty percent (80%) of the workers' average weekly wage as determined for purposes of the Trade Act of 1974.
 - (8) The foregoing eligibility requirements and the conditions of benefit disqualifications imposed by KRS 341.370 shall be strictly construed. Nothing in this section, excepting subsection (5), nor in KRS 341.360 or 341.370 shall affect the establishment of a "benefit year."

341.360. Conditions of disqualification for benefits.

No worker may be paid benefits for any week of unemployment:

- (1) With respect to which a strike or other bona fide labor dispute which caused him to leave or lose his employment is in active progress in the establishment in which he is or was employed, except that benefits may be paid unless the employer notifies the department in writing within seven (7) days after the beginning of such alleged strike or labor dispute of the alleged existence of such strike or labor dispute. For the purpose of this subsection a lockout shall not be deemed to be a strike or a bona fide labor dispute and no worker shall be denied benefits by reason of a lockout;
- (2) For which he has received or is seeking unemployment compensation under an unemployment compensation law of another state or of the United States, except as otherwise provided by an arrangement between this state and such other state or the United States. But if the appropriate agency of such state or of the United States finally

determines that he is not entitled to such unemployment compensation, this subsection shall not apply; or

- (3)
- (a) Which, when based on service in an instructional, research, or principal administrative capacity in an institution of higher education as defined in subsection (2) of KRS 341.067 or in an educational institution as defined in subsection (4) of KRS 341.067, begins during the period between two (2) successive academic years, or during a similar period between two (2) regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the worker performs such services in the first of such academic years or terms and if there is a contract or a reasonable assurance that the worker will perform such service in any such capacity for any institution or institutions of higher education or an educational institution in the second of such academic years or such terms; or
 - (b) Which, when based on service other than as defined in paragraph (a) of this subsection, in an institution of higher education or an educational institution, as defined in subsection (2) or (4) of KRS 341.067, begins during the period between two (2) successive academic years or terms, if the worker performs such services in the first of such academic years or terms and there is a reasonable assurance that the worker will perform such services in the second of such academic years or terms; except that if benefits are denied to any worker under this paragraph and such worker was not offered an opportunity to perform such services for such institution of higher education or such educational institution for the second of such academic years or terms, such worker shall be entitled to a retroactive payment of benefits for each week for which the worker filed a timely claim for benefits and for which benefits were denied solely by reason of this paragraph; or
 - (c) Which, when based on service in any capacity defined in paragraphs (a) and (b) of this subsection, begins during an established and customary vacation period or holiday recess if the worker performs any such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such worker will perform any such services in the period immediately following such vacation period or holiday recess; or
 - (d) Based on service in any capacity defined in paragraph (a) or (b) of this subsection when such service is performed by the worker in an institution of higher education or an educational institution, as defined in subsection (2) or (4) of KRS 341.067, while the worker is in the employ of an educational service agency, and such unemployment begins during the periods and pursuant to the conditions specified in paragraphs (a), (b), and (c) of this subsection. For purposes of this paragraph the term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such services to one (1) or more institutions of higher education or educational institutions.
- (4) Except that any benefits paid to a worker based on service other than as defined in subsection (3)(a) of this section performed in an institution of higher education as defined in subsection (2) of KRS 341.067 shall be deemed to have been paid as a result of departmental error and not recoverable by the cabinet or such institution if such payment is improper by virtue of the retroactive application to October 30, 1983, of subsection (3)(b) of this section.

- (5) Benefits shall not be paid to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two (2) successive sport seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the later of such seasons (or similar periods).
- (6)
 - (a) Benefits shall not be paid on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was residing in the United States under color of law at the time such services were performed (including an alien who was lawfully present in the United States as a result of the application of the provisions of section 203(a)(7) or section 212(d)(5) of the immigration and nationality act).
 - (b) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.
 - (c) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of his alien status shall be made except upon a preponderance of the evidence.
- (7) With respect to which the worker is suspended from work for misconduct, as defined in KRS 341.370(6), connected with the work.

341.370. Disqualifications; length of time.

- (1) A worker shall be disqualified from receiving benefits for the duration of any period of unemployment with respect to which:
 - (a) He has failed without good cause either to apply for available, suitable work when so directed by the employment office or the secretary or to accept suitable work when offered him, or to return to his customary self-employment when so directed by the secretary; or
 - (b) He has been discharged for misconduct or dishonesty connected with his most recent work, or from any work which occurred after the first day of the worker's base period and which last preceded his most recent work, but legitimate activity in connection with labor organizations or failure to join a company union shall not be construed as misconduct; or
 - (c) He has left his most recent suitable work or any other suitable work which occurred after the first day of the worker's base period and which last preceded his most recent work voluntarily without good cause attributable to the employment. No otherwise eligible worker shall be disqualified from receiving benefits for leaving his next most recent suitable work which was concurrent with his most recent work, or for leaving work which is one hundred (100) road miles or more, as measured on a one-way basis, from his home to accept work which is less than one hundred (100) road miles from his home or for otherwise accepting work which is a bona fide job offer with a reasonable expectation of continued employment.
- (2) A worker shall be disqualified from receiving benefits for any week with respect to which he knowingly made a false statement to establish his right to or the amount of his benefits, and, within the succeeding

twenty-four (24) months, for the additional weeks immediately following the date of discovery, not to exceed a total of fifty-two (52), as may be determined by the secretary.

- (3) No worker shall be disqualified under paragraph (b) or (c) of subsection (1) of this section unless the employer, within a reasonable time as prescribed by regulations promulgated by the secretary, notifies the Cabinet for Workforce Development and the worker in writing of the alleged voluntary quitting or the discharge for misconduct. Nothing in this subsection shall restrict the right of the secretary to disqualify a worker whose employer has refused or failed to notify the Cabinet for Workforce Development of the alleged voluntary quitting or discharge for misconduct, if the alleged voluntary quitting or discharge for misconduct is known to the secretary prior to the time benefits are paid to the worker. The exercise of the right by the secretary, in the absence of timely notice from the employer, shall not relieve the employer's reserve account or reimbursing employer's account of benefit charges under the provisions of subsection (3) of KRS 341.530.
- (4) As used in this section and in subsection (3) of KRS 341.530, "most recent" work shall be construed as that work which occurred after the first day of the worker's base period and which last preceded the week of unemployment with respect to which benefits are claimed; except that, if the work last preceding the week of unemployment was seasonal, intermittent or temporary in nature, most recent work may be construed as that work last preceding the seasonal, intermittent or temporary work.
- (5) No worker shall be disqualified or held ineligible under the provisions of this section or KRS 341.350, who is separated from employment pursuant to a labor management contract or agreement, or pursuant to an established employer plan, program or policy, which permits the employer to close the plant or facility for purposes of vacation or maintenance.
- (6) "Discharge for misconduct" as used in this section shall include, but not be limited to, separation initiated by an employer for falsification of an employment application to obtain employment through subterfuge; knowing violation of a reasonable and uniformly enforced rule of an employer; unsatisfactory attendance if the worker cannot show good cause for absences or tardiness; damaging the employer's property through gross negligence; refusing to obey reasonable instructions; reporting to work under the influence of alcohol or drugs or consuming alcohol or drugs on employer's premises during working hours; conduct endangering safety of self or co-workers; and incarceration in jail following conviction of a misdemeanor or felony by a court of competent jurisdiction, which results in missing at least five (5) days work.
- (7) "Duration of any period of unemployment," as that term is used in this section, shall be the period of time beginning with the worker's discharge, voluntary quitting, or failure to apply for or accept suitable work and running until the worker has worked in each of ten (10) weeks, whether or not consecutive, and has earned ten (10) times his weekly benefit rate in employment covered under the provisions of this chapter or a similar law of another state or of the United States.

341.380. Benefits, how paid; calculation of amount; increase in maximum weekly benefit rate.

- (1) All benefits shall be paid through employment offices, or such other agencies as may be designated by regulations of the secretary. Claims

for all payments of benefits shall be made in accordance with regulations of the secretary.

- (2) The weekly benefit rate payable to an eligible worker for weeks of unemployment shall, except as provided in KRS 341.390, be an amount equal to one and one hundred eighty-five one-thousandths of one percent (1.185%) of his total base-period wages, except that no worker's weekly benefit amount shall be less than twenty-two dollars (\$22.00), nor more than the maximum rate as determined in accordance with subsection (3) of this section.
- (3) Prior to the first day of July of each year the secretary shall determine the average weekly wage for insured employment by dividing the average monthly employment, as obtained by dividing the total monthly employment reported by subject employers for the preceding calendar year by twelve (12), into the total wages reported by such employers for such calendar year and dividing by fifty-two (52). Five percent (5%) of the amount thus obtained, adjusted to the nearest multiple of one dollar (\$1.00), shall constitute the maximum weekly benefit rate for those workers whose benefit year commences on or after the first day of July of such year and prior to the first day of July of the next following year; except that for the benefit years beginning on or after July 1, 1982, if the "trust fund balance" as of December 31 immediately preceding the benefit year is less than one hundred twenty million dollars (\$120,000,000), the maximum weekly benefit rate shall not exceed the prior year's maximum weekly benefit rate. If such "trust fund balance" as of December 31 immediately preceding the benefit year:
 - (a) Equals or exceeds one hundred twenty million dollars (\$120,000,000), but is less than one hundred fifty million dollars (\$150,000,000), the maximum weekly benefit rate shall not exceed the prior year's maximum weekly benefit rate by more than six percent (6%). The rate thus determined shall be adjusted to the nearest multiple of one dollar (\$1.00);
 - (b) Equals or exceeds one hundred fifty million dollars (\$150,000,000) but is less than two hundred fifty million dollars (\$250,000,000), the maximum weekly benefit rate shall not exceed the prior year's maximum weekly benefit rate by more than eight percent (8%). The rate thus determined shall be adjusted to the nearest multiple of one dollar (\$1.00);
 - (c) Equals or exceeds two hundred fifty million dollars (\$250,000,000), but is less than two hundred seventy-five million dollars (\$275,000,000), the maximum weekly benefit rate shall not exceed the prior year's maximum weekly benefit rate by more than ten percent (10%). The rate thus determined shall be adjusted to the nearest multiple of one dollar (\$1.00).
 - (d) Equals or exceeds two hundred seventy-five million dollars (\$275,000,000), but is less than three hundred fifty million dollars (\$350,000,000), the maximum weekly benefit rate shall not exceed the prior year's maximum weekly benefit rate by more than twelve percent (12%). The rate thus determined shall be adjusted to the nearest multiple of one dollar (\$1.00); and
 - (e) Is such that it resulted in the establishment of an employer contribution rate schedule, as provided for in KRS 341.270, for the current calendar year which has a higher minimum rate and a higher maximum rate than the schedule in effect for the immediately preceding calendar year, the maximum weekly benefit rate shall not exceed the prior year's maximum weekly benefit rate.

- (4) The maximum amount of benefits payable to any worker within any benefit year shall be the amount equal to whichever is the lesser of (a) twenty-six (26) times his weekly benefit rate or (b) one-third (1/3) of his base-period wages, except that no worker's maximum amount shall be less than fifteen (15) times his weekly benefit rate. Such maximum amount, if not a multiple of one dollar (\$1.00), shall be adjusted to the nearest multiple of one dollar (\$1.00).

341.390. Deductions from benefits.

There shall be deducted from the benefit rate determined for a worker in accordance with subsection (2) of KRS 341.380:

- (1) Eighty percent (80%), adjusted to the nearest multiple of one dollar (\$1.00), of the amount of wages earned by such worker during the week of unemployment with respect to which he claims benefits. For the purpose of this subsection, wages shall also include amounts earned by benefit claimants in self employment provided such earnings otherwise meet the definition of wages as contained in KRS 341.030;
- (2) The amount of remuneration which the worker has received or is receiving with respect to such week of unemployment (adjusted to the nearest multiple of one dollar (\$1.00)), in the form of remuneration in lieu of notice; and
- (3)
 - (a) The amount of compensation payable to an individual for any week which begins after March 31, 1980, and which begins in a period with respect to which such individual is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment under a plan maintained or contributed to by a chargeable or base-period employer, shall be reduced (but not below zero) by an amount equal to the amount of such pension, retirement or retired pay, annuity, or other payment which is reasonably attributable to such week; except that the secretary may provide for limitations on the amount of any such deduction to take into account contributions made by the worker for the pension, retirement or retired pay, annuity, or other similar periodic payment.
 - (b) No reduction shall be made under this section by reason of the receipt of a pension if the services performed by the worker during the base period (or remuneration received for such services) for such employer did not affect the worker's eligibility for, or increase the amount of, such pension, retirement or retired pay, annuity, or other similar periodic payment. The conditions specified by this subsection shall not apply to pensions paid under the Social Security Act or the Railroad Retirement Act of 1974 (or the corresponding provisions of prior law). Payments made under such acts shall be treated solely in the manner specified by paragraph (a) of this subsection.
 - (c) If Public Law 94-566, Public Law 96-364 or the federal act which amends either for any cause shall become inoperative in its application, or stayed pendente lite, as to deductions of such compensation, then, subsection (3) of this section, by virtue of that fact, shall likewise and to the same extent, become inoperative as to such deductions.

341.391. Deduction and withholding of estimated tax.

- (1) An individual filing a new claim for unemployment compensation shall, at the time of filing the claim, be advised that:
 - (a) Unemployment compensation is subject to federal and state income tax;
 - (b) Requirements exist pertaining to estimated tax payments;
 - (c) The individual may elect to have federal income tax deducted and withheld from the individual's payment of unemployment compensation at the amount specified in the Federal Internal Revenue Code; and
 - (d) The individual shall be permitted to change a previously elected withholding status one (1) time during the individual's benefit year.
- (2) Amounts deducted and withheld from unemployment compensation shall remain in the unemployment fund until transferred to the federal taxing authority as a payment of income tax.
- (3) The secretary shall follow all procedures specified by the United States Department of Labor and the Federal Internal Revenue Service pertaining to the deducting and withholding of income tax.
- (4) Amounts shall be deducted and withheld in accordance with the priorities established in administrative regulations promulgated by the secretary.

341.392. Deduction and withholding of child support obligations from benefits.

- (1) A worker filing a new claim for unemployment benefits shall, at the time of filing such claim, disclose whether or not he owes child support obligations as defined under this section. If any such worker discloses that he owes child support obligations, and is determined to be eligible for unemployment benefits, the secretary shall notify the state or local child support enforcement agency enforcing such obligation that the worker has been determined to be eligible for unemployment benefits.
- (2) The secretary shall deduct and withhold from any unemployment benefits payable to a worker that owes child support obligations:
 - (a) The amount specified by the worker to the secretary to be deducted and withheld under this subsection, if neither (b) nor (c) applies;
 - (b) The amount, if any, determined pursuant to an agreement submitted to the secretary under 42 U.S.C. 654 (Section 454(20)(b)(i) of the Social Security Act) by the state or local child support enforcement agency if (c) is not applicable; or
 - (c) Any amount required to be so deducted and withheld from such unemployment benefits pursuant to legal process as that term is defined in 42 U.S.C. 662(e)(Section 462(e) of the Social Security Act) properly served upon the secretary.
- (3)
 - (a) Any amount deducted and withheld under this section shall be paid by the secretary to the appropriate state or local child support enforcement agency.
 - (b) Any amount deducted and withheld under this section shall for all purposes be treated as if it were paid to the worker as unemployment benefits and paid by such worker to the state or local child support enforcement agency in satisfaction of the worker's child support obligations.
- (4) For purposes of this section, the term "unemployment benefits" shall mean any compensation payable under this Chapter (including amounts payable by the secretary pursuant to an agreement under any federal law

providing compensation, assistance, or allowances with respect to unemployment).

- (5) The provisions set forth in this section apply only if appropriate arrangements have been made for reimbursement by the state or local child support enforcement agency for the administrative costs incurred by the secretary under this section which are attributable to child support obligations being enforced by the state or local child support enforcement agency.
- (6) The term "child support obligations" is defined for purposes of these provisions as including only obligations which are being enforced pursuant to a plan prescribed in 42 U.S.C. 654 (Section 454 of the Social Security Act) which has been approved by the Secretary of Health and Human Services under 42 U.S.C. 651-662 (Part D of Title IV of the Social Security Act).
- (7) The term "state or local child support enforcement agency" as used in these provisions means any agency of a state or a political subdivision thereof operating pursuant to a plan described in this section.

341.400. Notice to workers.

Each subject employer shall post and maintain in places readily accessible to his workers printed statements concerning such regulations or such matters as the secretary prescribes. Each subject employer shall make available to his workers copies of such printed statements and such materials relating to claims for benefits as the secretary prescribes. Such printed statements and materials shall be supplied by the cabinet without cost to the employer or workers.

341.410. Determination of insured status--Notification of worker.

The secretary acting through his duly authorized representatives shall, upon request, determine the insured status of a worker. If a worker is found to have fully insured status, as defined in subsection (3) of KRS 341.090, the cabinet shall notify all interested parties. If found to be not fully insured the cabinet shall notify the worker. The secretary may, at any time within a worker's benefit year, make such further determinations as may affect the worker's eligibility for benefits or may set aside, reconsider, modify, or amend a determination at any time on the basis of additional information or to correct a clerical mistake. The secretary may by regulations prescribe what constitutes a determination as used in this section and subsections (2) and (3) of KRS 341.420.

341.415. Recovery and recoupment; limitations.

- (1) Any person who has received any sum as benefits under this chapter or any other state's unemployment insurance statutes or any United States department of labor unemployment insurance benefit program providing the secretary has signed a reciprocal agreement with such other state or the United States department of labor as provided in KRS 341.145, while any condition for the receipt of such benefits was not fulfilled in his case, or while he was disqualified from receiving benefits, or if he has received benefits in weeks for which he later receives a back pay award, shall, in the discretion of the secretary, either have such sum deducted from any future benefits payable to him under this chapter or repay the department for the fund a sum equal to the amount so received by him. If after due notice the recipient of such sum fails to remit or arrange for remittance of the sum, the sum may be collected in the manner provided in subsection (2) of KRS 341.300 for collection

of past due contributions and any sums so collected shall be credited to the pooled account or the appropriate reimbursing employer account. Unless there has been a false statement, misrepresentation, concealment of material information, or an award of back pay, by a recipient of benefits, there shall be no recoupment or recovery of an improperly paid benefit, except by deduction from any future benefits payable to him under this chapter, if the benefit was paid as a result of departmental error. For purposes of this section, overpayments as a result of a reversal of entitlement to benefits in the appeal or review process shall not be construed to be the result of departmental error.

- (2) At or after the commencement of an action under subsection (1) of this section, attachment may be had against property of the recipient of improperly paid benefits in the manner provided in subsection (3) of KRS 341.300.
- (3) A lien on a parity with state, county, and municipal ad valorem tax liens, is hereby created in favor of the department upon all property of any recipient of improperly paid benefits. This lien shall be for a sum equal to the amount of the overpayment finally determined. The lien shall commence from such time as the recipient has exhausted or abandoned the appeal procedure set forth in this chapter and the amount of the overpayment is finally fixed. A notice of lien may be filed in the same manner as that provided for in KRS 341.310.
- (4) Any amount paid to a person as benefits, which he has been found liable to repay or to have deducted from future benefits under subsections (1), (2) and (3) of this section, which has neither been repaid nor so deducted within a period of five (5) years following the last day of the benefit year within which it was paid, may be deemed to be uncollectible and shall be permanently charged to the pooled account, except that if such payment was made by reason of fraudulent representations, no future benefits shall be paid such person within a period of ten (10) years of the last day of the benefit year within which such payments were made at which time these amounts may be declared uncollectible. Nothing in this subsection shall be deemed to affect collection of improperly paid benefits pursuant to a judgment or other legal remedy.
- (5) In the event benefits have been paid as a result of false statement, misrepresentation or concealment of material information by a recipient of benefits and have not been repaid by the recipient within one (1) calendar year from the date of the first notice, interest at the rate of one and five tenths percent (1.5%) per month or any part thereof, shall be imposed on and added to the unpaid balance each successive month, providing due notice has been given to the recipient. Such interest shall be paid into the unemployment compensation administration account.
- (6) The deduction from future benefits specified in subsection (1) of this section shall be limited to twenty-five percent (25%) of the benefit amount otherwise payable under this chapter unless the overpayment resulted from a backpay award. The rate of deduction from benefits payable by another state or the United States of America shall be determined by the applicable state or federal statute.

APPEALS

341.420. Appointment of referees--Appeals.

- (1) The secretary shall appoint one or more impartial referees according to KRS 341.125 to hear and decide appealed claims.

- (2) A party to a determination may file an appeal to a referee as to any matter therein within fifteen (15) days after the date such determination was mailed to his last known address.
- (3) If benefits are allowed by a determination of the secretary, or a decision of a referee, the secretary or a reviewing court, such benefits shall be paid promptly without regard to the pendency of an appeal or period for filing an appeal therefrom. If a determination or decision allowing benefits is modified or reversed by a subsequent determination or decision, benefits shall be paid or denied for weeks of unemployment thereafter in accordance with such modification or denial. No injunction, supersedes, stay or other writ or process suspending payment of such benefits shall be issued.
- (4) Unless such appeal is withdrawn, a referee, after affording the parties reasonable opportunity for a fair hearing, shall affirm or modify the determination. The parties shall be duly notified of his decision, together with the reasons therefore, which shall be deemed to be the final decision unless within fifteen (15) days after the date of mailing of such decision, further appeal is initiated under KRS 341.430.
- (5) No finding of fact or law, judgment, conclusion, or final order made with respect to a claim for unemployment compensation under this chapter may be conclusive or binding in any separate or subsequent action or proceeding in another forum, except proceedings under this chapter, regardless of whether the prior action was between the same or related parties or involved the same facts.

341.430. Review by commission.

- (1) The commission may on its own motion affirm, modify, or set aside any decision of a referee on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The commission may remove to itself or transfer to another referee the proceedings on any claims pending before a referee.
- (2) An application for review by the commission of any administrative determination affecting an employing unit's liability, contribution rate, or amount of contributions may be filed by such employing unit within twenty (20) days after notice of such determination was mailed to such employing unit's last known address.
- (3) Any proceedings before the commission shall be heard and determined by the entire commission composed of three (3) members, except that no member of the commission shall participate in any case in which he is an interested party, and the chairman shall act alone in the absence or disqualification of any other member. The commission shall promptly notify the parties to any proceedings of its findings and decisions.

341.440. Procedure on review -- Witness fees -- Finality of decisions.

- (1) The manner in which appeals are presented and hearings and appeals conducted shall be in accordance with regulations prescribed by the secretary for determining the rights of the parties, such hearings to be conducted in a summary manner. A complete record shall be kept of all proceedings in connection with any appeal. All testimony at any hearing upon an appeal shall be recorded either stenographically or mechanically, but need not be transcribed unless further appealed. No examiner, referee or member of the commission shall participate in any hearing in which he is an interested party.

- (2) Witnesses subpoenaed pursuant to proceedings under KRS 341.420 and 341.430 shall be allowed fees in accordance with rates allowed by law. Such fees and all expenses of proceedings before the department or commission involving disputed claims shall be deemed a part of the expense of administering this chapter.
- (3) In the absence of an appeal therefrom, decisions of the commission shall become final twenty (20) days after the date they are made.

JUDICIAL REVIEW

341.450. Judicial review.

- (1) Except as provided in KRS 341.460, within twenty (20) days after the date of the decision of the commission, any party aggrieved thereby may, after exhausting his remedies before the commission, secure judicial review thereof by filing a complaint against the commission in the circuit court of the county in which the claimant was last employed by a subject employer whose reserve account or reimbursing employer account is affected by such claims. Any other party to the proceeding before the commission shall be made a defendant in such action. The complaint shall state fully the grounds upon which review is sought, assign all errors relied on, and shall be verified by the plaintiff or his attorney. The plaintiff shall furnish copies thereof for each defendant to the commission, which shall deliver one (1) copy to each defendant.
- (2) Summons shall issue upon the complaint directing the commission to file answer within twenty (20) days after service thereof. Such summons shall be served upon a member of the commission, or upon such person as the commission designates, and such service shall be deemed complete service upon all members of the commission. The commission may be represented by any qualified attorney designated by the commission for that purpose or, at the request of the commission, by the attorney general. With its answer, the commission shall certify and file as an exhibit with the court all documents and papers, and a transcript of all testimony taken in the matter, and orders made therein, together with its findings of fact and decision therein. If consented to by the plaintiff and the adverse party, an abstract of any portion of the record may be certified by the commission in lieu of certifying such portion of the record in full. The commission may certify to the court questions of law involved in any decision by it.
- (3) Such actions, and the questions so certified, shall be heard by the court in a summary manner upon the record certified by the commission. The court on its own motion or on the motion of an interested party shall assign a date certain for the review. The clerk of the court shall notify the attorneys of record of the date assigned for review at least ten (10) days in advance thereof. The court shall enter judgment, affirming, modifying, or setting aside the order and the decision appealed from or determining the question of law certified to it by the commission and may in advance of judgment, remand the case to the commission for further proceedings in accordance with the direction of the court.
- (4) An appeal may be taken from the decision of the circuit court to the Court of Appeals, in the same manner, but not inconsistent with the provisions of this chapter, as is provided in equity cases.
- (5) It shall not be necessary, in any judicial proceeding under this section or KRS 341.460, to have entered exceptions to the rulings of the commission, and no bond shall be required for entering such appeal. Upon the final determination of such judicial proceeding, the

commission shall enter an order in accordance with such determination.

A petition for judicial review shall not act as a supersedeas or stay unless the commission shall so order.

341.460. Appeal to Franklin Circuit Court.

- (1) In all cases of appeals arising under subsection (1) of KRS 341.360 or subsection (2) of KRS 341.430 court review may be had as provided in KRS 341.450 except that review shall be had to the Franklin Circuit Court.
- (2) A claimant who has been denied benefits under subsection (1) of KRS 341.360 may appeal for himself and for and on behalf of all other claimants similarly situated within that establishment or other establishments whose claims were denied by reason of the same alleged labor dispute or strike. An employer may appeal to the Franklin Circuit Court from the decision of the commission allowing benefits under subsection (1) of KRS 341.360 and all the workers in his establishment may be joined in such appeal.

341.470. Protection of rights and benefits; representation in proceedings before commission.

- (1) No agreement by a worker to waive, release, or commute his rights to benefits or any other rights under this chapter shall be valid. No agreement by any worker to pay any portion of a subject employer's contributions, required under this chapter from such subject employer, shall be valid. No subject employer shall directly or indirectly make or require or accept any deductions from wages to finance the subject employer's contributions required of him. In cases involving awards to a worker by an arbitrator, the National Labor Relations Board, court, other administrative body or mediator, the secretary may require the employer to withhold benefits paid under this chapter from the award and pay the amount withheld into the unemployment insurance trust fund.
All subject employers are required to notify the Department for Employment Services, Cabinet for Workforce Development prior to paying any back pay award.
- (2) No worker claiming benefits shall be charged fees of any kind in any proceeding under this chapter by the commission, the secretary or his representatives. Any worker claiming benefits in any proceeding before the commission may represent himself or may be represented by counsel or other agent duly authorized by such worker and shall be afforded the opportunity to participate in the proceeding without restriction; but no counsel or agent shall either charge or receive for such service more than an amount approved by the commission.
- (3)
 - (a) Any employer in any proceeding before the commission may represent himself or may be represented by counsel or other agent duly authorized by such employer;
 - (b) Any person appearing in any proceeding before the commission who is an officer of, or who regularly performs in a managerial capacity for, a corporation or partnership which is a party to the proceedings in which the appearance is made shall be permitted to represent such corporation or partnership and shall be afforded the opportunity to participate in the proceeding without restriction.
- (4) No assignment, pledge or encumbrance of any right to benefits due or payable under this chapter shall be valid; and such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy

for the collection of debt. Benefits received by any worker, as long as they are not mingled with other funds of the recipient, shall be exempt from any remedy for the collection of all debts except debts incurred for necessities furnished to such worker or his spouse or dependents during the time such worker was unemployed. No waiver of any exemption provided for in this subsection shall be valid.

- (5) The provisions of this section shall not be applicable to child support deductions made in accordance with KRS 341.392 and withholding for federal and state income tax in accordance with KRS 341.391.

FUNDS AND ACCOUNTS

341.490. Unemployment insurance fund, establishment and control.

- (1) There shall be a special fund known as the unemployment insurance fund which shall be administered separate and apart from all public money or funds of this state. This fund shall consist of:
 - (a) All contributions, payments in lieu of contributions, and money collected under this chapter, except fines, penalties, and interest on delinquent contributions collected under KRS 341.300;
 - (b) Interest earned upon any money in the fund;
 - (c) Any property or securities acquired through use of money belonging to the fund;
 - (d) All earnings of such property or securities;
 - (e) All money received from the federal unemployment account in the unemployment trust fund in accordance with Title XII of the Social Security Act as amended;
 - (f) All money credited to the account of this state in the unemployment trust fund in accordance with section 903 of the Social Security Act as amended; and
 - (g) All money received from the federal government as reimbursement, pursuant to section 204 of the Federal-State Extended Unemployment Compensation Act of 1970.
- (2) All moneys in the fund shall be commingled and undivided.
- (3) Subject to the provisions of this chapter, the secretary may have full power, authority and jurisdiction over the fund, including all money and property or securities belonging thereto, and may perform any act necessary or convenient in the administration thereof consistent with this chapter.

341.500. Accounts and deposits.

- (1) The state treasurer shall be the treasurer and custodian of the fund. He shall administer the fund in accordance with the direction of the secretary and shall pay all vouchers approved by the finance and administration cabinet and drawn upon the fund in accordance with regulations prescribed by the secretary. He shall maintain within the fund three (3) separate accounts: a clearing account; an unemployment trust fund account; and a benefit account.
- (2) All money payable to the fund, upon receipt thereof by the cabinet, shall be forwarded to the treasurer, who shall immediately deposit it in the clearing account. Refunds payable under KRS 341.330 may be paid from the clearing account upon warrants issued by the treasurer under the direction of the secretary. After clearance thereof, all other money in the clearing account shall be immediately deposited with the secretary of the federal treasury to the credit of the account of this state in the unemployment trust fund, established and maintained under

section 904 of the social security act (49 Stat. 620), as amended, any other law to the contrary notwithstanding.

- (3) The benefit account shall consist of all money requisitioned from the state's account in the unemployment trust fund. Except as otherwise provided in this chapter, money in the clearing and benefit accounts may be deposited by the treasurer, under the direction of the secretary, in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund.

341.510. Withdrawals from trust fund

Governor may request transfer of funds from federal unemployment trust fund.

- (1) Except as provided in subsection (2) of this section and except such money as has been credited to the account of this state in the unemployment trust fund under the provisions of section 903 of the Social Security Act as amended, and appropriated by legislative action authorized thereunder for administrative expenses, money shall be requisitioned from the state's account in the unemployment trust fund solely for the payment of benefits and in accordance with regulations prescribed by the secretary. The secretary, through the state treasurer acting as his fiscal agent, shall from time to time requisition from the unemployment trust fund such amounts not exceeding the amounts standing to this state's accounts therein, as he considers necessary for the payment of benefits for a reasonable future period.
- (2) The governor may, at any time, pursuant to section 1202 of the Social Security Act, request that funds be transferred from this state's account in the unemployment trust fund for repayment of part or all of that balance of advances made to the state under section 1201 of the Social Security Act.
- (3) Upon receipt thereof the treasurer shall deposit such money in the benefit account and shall issue his vouchers for the payment of benefits solely from such benefit account. Expenditures of such money in the benefit account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody. All vouchers issued by the treasurer for the payment of benefits and refunds shall bear the signature of the treasurer and the approval in writing of the secretary of the finance and administration cabinet.
- (4) Any balance of money requisitioned from the unemployment trust fund that remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of benefits during succeeding periods, or, in the discretion of the secretary, shall be redeposited with the secretary of the federal treasury to the credit of this state's account in the unemployment trust fund, as provided in KRS 341.500.

341.520. Disposition of funds upon discontinuance of trust fund.

KRS 341.490, 341.500 and 341. 510, to the extent that they relate to the unemployment trust fund, shall be operative only so long as that fund continues to exist and so long as the secretary of the federal treasury continues to maintain for this state a separate book account of all funds deposited therein by this state for benefit purposes, together with this state's proportionate share of the earnings of that fund, from which no

other state is permitted to make withdrawals. If the unemployment trust fund ceases to exist, or such separate book account is no longer maintained, all money, property or securities therein, belonging to the unemployment insurance fund of this state shall be transferred to the treasurer of the unemployment insurance fund, who shall hold, invest, transfer, sell, deposit and release such money, property or securities in a manner approved by the secretary and the finance and administration cabinet, in accordance with this chapter. Such money shall be invested in bonds or other interest-bearing obligations of the United States of America. Investments shall at all times be so made that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits. The state treasurer shall dispose of securities or other property belonging to the unemployment insurance fund only under the direction of the secretary and the secretary of the finance and administration cabinet.

341.530. Employer reserve accounts--Charging of benefits.

- (1) The department shall maintain a reserve account for each subject employer making contributions to the fund and a reimbursing employer account for each subject employer making payment in lieu of contributions, and shall, except as provided in KRS 341.590, credit to such account the total amount of all contributions or benefit reimbursement paid by the employer on his own behalf. Nothing in this section or elsewhere in this chapter shall be construed to grant any employer or individual who is or was in his employ prior claims or rights to the amounts paid by him into the fund.
- (2) Except as provided in subsection (3) of this section, all regular benefits paid to an eligible worker in accordance with KRS 341.380 plus the extended benefits paid in accordance with KRS 341.700 to 341.740, subject to the provisions of paragraphs (a) and (b) below, shall be charged against the reserve account or reimbursing employer account of his most recent employer. No employer shall be deemed to be the most recent employer unless the eligible worker to whom benefits are payable shall have worked for such employer in each of ten (10) weeks whether or not consecutive.
 - (a) Subject employers, which are not governmental entities as defined in KRS 341.069, shall be charged one-half (%) of the extended benefits paid in accordance with KRS 341.700 to 341.740; and
 - (b) Subject employers which are governmental entities, as defined in KRS 341.069, shall be charged for all extended benefits paid in accordance with KRS 341.700 to 341.740 for compensable weeks occurring on or after January 1, 1979 and for one-half (%) of the extended benefits paid for compensable weeks occurring prior to such date.
- (3) Notwithstanding the provisions of subsection (2) of this section, benefits paid to an eligible worker and chargeable to a contributing employer's reserve account under such subsection shall be charged against the pooled account if such worker was discharged by such employer for misconduct connected with his most recent work for such employer, voluntarily left his most recent work with such employer without good cause attributable to the employment, or such employer has continuously employed the worker without significant interruption since the end of the worker's base period and in the week with respect to which benefits are paid, wages and employment are provided to the worker by such employer to the same extent as during the base period, and the employer within a reasonable time, as prescribed by regulation of the secretary, notifies the department, in writing, of the alleged

voluntary quitting, discharge for misconduct or continuing employment; provided, however, that no employer making payments to the fund in lieu of contributions shall be relieved of charges by reason of this subsection.

- (4) Each subject employer's reserve account or reimbursing account shall, unless terminated as of the computation date (as defined in subsection (5) of KRS 341.270), be charged with all benefits paid to eligible workers which are chargeable to such reserve account or reimbursing account under subsection (2) of this section. A subject employer's reserve account or reimbursing account shall be deemed to be terminated if he has ceased to be subject to this chapter, and his account has been closed and any balance remaining therein has been transferred to the fund's pooled account or to a successor's account as provided in KRS 341.540 or has been refunded if the employer is a reimbursing employer.
- (5) Notwithstanding subsection (1) of this section, two (2) or more nonprofit (Internal Revenue Code sec. 501(c)(3)) organizations may jointly request the secretary to establish a group reserve account or reimbursing account for such nonprofit organizations. Two (2) or more governmental entities may jointly request the secretary to establish a group reserve account or reimbursing account, and once established, such account shall remain in effect at least two (2) calendar years and thereafter until either dissolved at the discretion of the secretary or upon filing application for dissolution by the group members. Each member of a group shall be jointly or severally liable for all payments due under this chapter from each or all of such group members. The secretary shall prescribe such procedures as he deems necessary for the establishment, maintenance and dissolution of a group reserve account or reimbursing account.
- (6) Any subject contributing employer may at any time make voluntary payments to the fund, additional to the contributions required under KRS 341.260 and 341.270. Notwithstanding any other provision of this chapter, contributions paid on or before the computation date and voluntary payments made within twenty (20) days following the mailing of notices of new rates shall be credited to an employer's reserve account as of the computation date, provided no voluntary payments shall be used in computing an employer's rate unless the payment is made prior to the expiration of one hundred and twenty (120) days after the beginning of the year for which the rate is effective. Voluntary contributions by any employer subject to a minimum rate as provided in KRS 341.270(2) or KRS 341.272(1) shall not exceed any negative balance they may have in their reserve account as of the computation date. Any employer who is delinquent in the payment of contributions, penalties, or interest as of the computation date shall be entitled to make voluntary payments only after the amount of the delinquency is paid in full.

341.540. Reserve accounts of successive employing units.

- (1) Any employing unit which succeeds to or acquires the organization, trade or business of a subject employer shall assume the resources and liabilities of the predecessor's reserve account, including interest, and shall continue the payment of all contributions and interest due under this chapter, except that the successor or acquirer shall not be required to assume the liability of any delinquent contributions and interest of a predecessor or predecessors unless the cabinet notifies the successor or acquirer of such delinquency within six (6) months after the department has notice of the succession or acquisition.

- (2) The liability for delinquent contributions and interest imposed upon the successor or acquirer by subsection (1) of this section shall be secondary to the liability of the predecessor or predecessors, and if the delinquency has been reduced to judgment the order of execution on such judgment, shall be as follows:
- (a) Against the assets, both real and personal, of the predecessor or predecessors;
 - (b) Against the assets, both real and personal, of the business acquired; and
 - (c) Against the assets, both real and personal, of the successor or acquirer.
- (3) Notwithstanding the provisions of subsection (1), any employing unit which succeeds to or acquires a portion of the organization, trade or business from a subject employer, and who is, or by reason of such succession or acquisition becomes, a subject employer, shall assume the position of such employer with respect to the resources and liabilities of such reserve account, in proportion to the extent of such succession or acquisition as proposed by the parties in interest to the secretary for his approval or disapproval, and the taxable payroll, benefit charges and the potential benefit charges shall likewise be assumed by the successors or acquirers in interest in a like proportion. In the absence of an approved agreement, the secretary may, not sooner than three (3) calendar months following the date of succession or acquisition, establish the extent of succession based upon the proportion of gross payroll reported by the predecessor in the most recently completed calendar quarter preceding the date of succession or acquisition for workers employed by the successor subsequent to that date; or upon such other basis as may be set forth in regulation.
- (4)
- (a) The contribution rate of a successor or acquirer employing unit, whether in whole or in part, which was a subject employer prior to such succession or acquisition, shall not be affected by the transfer of the reserve account for the remainder of the rate year in which such succession or acquisition occurred.
 - (b) The contribution rate of a successor or acquirer employing unit, either in whole or in part, which was not a subject employer prior to such succession or acquisition shall be, for the calendar year in which such succession or acquisition occurred, the same rate as that of its predecessor.
 - (c) The contribution rate for a successor or acquirer employing unit which was not a subject employer prior to the simultaneous succession to or acquisition of two (2) or more predecessor reserve accounts, either in whole or in part, shall be the rate determined in accordance with the provisions of KRS 341.270, by combining the reserve accounts succeeded to or acquired as they existed as of the computation date for determining rates for the calendar year in which such succession or acquisition occurred.
 - (d) The contribution rate of a successor or acquirer employing unit which succeeds to or acquires, either in whole or in part, a predecessor's reserve account after a computation date but prior to the beginning of the calendar year immediately following such computation date shall be the rate determined, in accordance with KRS 341.270, by effecting the transfer of such reserve account as of the computation date immediately preceding the date of such succession or acquisition.

341.550. Pooled account.

- (1) The cabinet shall maintain a pooled account for contributing employers to which shall be credited:
 - (a) Payments received from the federal government under the provisions of section 204(a)(1) of the "Federal-State Extended Unemployment Compensation Act of 1970," and amendments thereto;
 - (b) All realized earnings and gains on investments of the fund;
 - (c) Except as provided in KRS 341.540, any balance remaining in the reserve account of any previously subject contributing employer after such employer has ceased to be subject to this chapter;
 - (d) Any payments into or amounts in the fund not allocable to any employer's reserve account; and
 - (e) Any payments collected under subsection (2) of this section.
- (2)
 - (a) Any benefits paid through error which would otherwise have been chargeable to the reserve account of a contributory employer shall be charged against the pooled account. However, no employer making payments to the fund in lieu of contributions shall be relieved of charges by reason of this subsection.
 - (b) The repayment of benefits paid erroneously as provided in subsection (1) of KRS 341.415 shall be credited to the pooled account. The pooled account shall be credited with any sums deducted from future benefits as provided in KRS 341.415 and shall be credited to the pooled account, provided the benefits were charged to the pooled account by reason of KRS 341.530(3), or paragraph (a) of this subsection. If the benefits were charged to and paid by any employer making payments to the fund in lieu of contributions, the amount of the repayment or the sum deducted from future benefits shall be credited to the reimbursing account of that employer, and may upon written request from the employer be refunded without interest.
- (3) One half (½) of the benefits paid to an eligible worker in accordance with KRS 341.700 to 341.740 shall be charged against the pooled account, except that during a period in which federal payments to states under section 204 of the federal-state Extended Unemployment Compensation Act of 1970 are reduced under an order issued under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177), one-half (½) of the benefits paid to an eligible worker in accordance with KRS 341.700 to 341.740, reduced by an amount equal to the difference of one-half (½) of the benefits paid to an eligible worker in accordance with KRS 341.700 to 341.740 and the amount of the federal payment, shall be charged against the pooled account.

341.570. Representation in court; expense of suit.

- (1) In any civil action to enforce the provisions of this chapter or in which the commission or the cabinet is an interested party, the commission or the cabinet may be represented by any qualified attorney who is designated by the secretary for that purpose. The expenses and compensation of such special attorney and any experts employed in connection with such proceedings shall be considered a proper cost of the administration of this chapter.
- (2) All criminal actions for violation of any provision of this chapter, or of any rules or regulations issued under it, shall be prosecuted by the attorney general of this state, or, at his request and under his direction, by the county attorney or Commonwealth attorney of any county in which the employing unit has a place of business or the violator resides or has filed a claim.

341.580. Limitations on payment of benefits.

Benefits shall be considered due and payable under this chapter only to the extent provided in this chapter and to the extent that money is available therefor to the credit of the unemployment insurance fund, and neither this state, the secretary, nor the cabinet shall be liable for any amount in excess of such sums.

341.590. Additional contributions if federal government fails to provide funds for administration.

If the federal government does not, for any fiscal year, make the certification for payment to this state of funds for the assistance of this state in the administration of this chapter as provided by Title III of the federal social security act (49 Stat. 620) or any amendment thereto, every employer subject to this chapter shall, for that fiscal year, pay to the unemployment compensation administration fund, to be used for the administration of this chapter, contributions equal to three-tenths of one percent (.3%) of such subject employer's wages payable for covered employment for the same period. These contributions shall be collected the same as contributions for the payment of benefits.

341.595. Governor to apply for advances from federal unemployment account.

The governor is hereby authorized to apply for advances to the credit of this state's account in the unemployment trust fund from the federal unemployment account in such fund as provided for in Title XII of the Social Security Act when the balance of this state's account requires such action.

341.600. Continuation--No vested right created.

- (1) The secretary, the cabinet, the commission, its personnel, or organization and funds shall constitute a continuation of the analogous provisions of the previous unemployment compensation laws of this state and the provisions of this chapter shall be considered as substituted in a continuing way for the provisions of such laws. Nothing in this chapter shall waive any payments required of any employer under any such laws.
- (2) No vested right shall exist against amendment or repeal of any part of this chapter.

341.610. Pledge to replace funds.

Kentucky hereby obligates itself for the replacement, within a reasonable time, of any moneys received pursuant to Title III of the Social Security Act which, because of any action or contingency, are lost or expended for purposes other than, or in amounts in excess of, those found necessary by the appropriate federal agency for the proper administration of this chapter.

341.611. Payment of interest on advances -- Surcharge for payment of interest deficit.

- (1) Any interest required to be paid on advances under Title XII of the Social Security Act shall be paid in a timely manner and shall not be

paid directly or indirectly (by an equivalent reduction in unemployment contributions or otherwise) by the state unemployment insurance fund.

- (2) Such interest shall be paid by the penalty and interest account as required by KRS 341.295.

341.612. Interest payment fund.

- (1) There is created within the state treasury a special fund for unemployment insurance known as the interest payment fund which shall be administered separate and apart from all public money or funds of the state.
- (2) The unemployment insurance interest payment fund shall be used solely for the purpose of payment of interest on advances under Title XII of the Social Security Act received from the United States department of labor in support of the unemployment insurance programs of the Commonwealth. The secretary shall have full power, authority and jurisdiction over the fund, including all money, property and securities belonging thereto, except where specified otherwise in subsection (4) of this section and KRS 341.295, and he shall perform any act necessary or convenient in the administration of the fund consistent with this section.
- (3) Any money collected for the purpose of paying interest on advances under Title XII of the Social Security Act shall be invested at interest in banks or other interest-bearing obligations of the United States of America. Investments shall at all times be made so that all the assets of the unemployment insurance interest payment fund shall always be convertible into cash when needed for the payment of interest on advances under Title XII of the Social Security Act. All interest income received under this section shall be credited to the interest payment fund. The state treasurer shall dispose of securities or other property belonging to the unemployment insurance interest payment fund only under the direction of the secretary and the secretary of the finance and administration cabinet.
- (4) Any balance of money remaining in the unemployment insurance interest payment fund after all interest due and owing on advances under Title XII of the Social Security Act has been paid shall be deposited with the secretary of the federal treasury to the credit of this state's unemployment trust fund for the payment of benefits.

341.620. Expenditure of federal moneys.

All moneys received pursuant to title III of the social security act, as amended, shall be expended solely for the purposes and in the amounts found necessary by the federal bureau of employment security for the proper and efficient administration of this chapter.

341.690. Effect when checks not presented within one year--Cancellation and reissue.

None of the funds, accounts or moneys administered, established, or maintained under this chapter shall be credited or otherwise transferred to the general expenditure fund or any other fund or account by reason of the provisions of KRS 41.370 or subject to escheat under any other section of the Kentucky Revised Statutes. Any unpaid check issued pursuant to the provisions of this chapter may be cleared from the records of the treasurer within the time and in the manner specified in KRS 41.370, except that the amount of such check shall remain to the credit of the fund or account against which it was drawn. Such checks if thereafter presented for

payment may be paid within the time and in the manner set forth in such section, except that the amount thereof shall be charged to the fund or account against which it was originally drawn.

EXTENDED BENEFITS

341.700. Effect of provisions relating to regular benefits on claims for, and the payment of, extended benefits.

Except when the result would be inconsistent with KRS 341.094, 341.096 and 341.710 to 341.740, as provided in the regulations of the secretary, the provisions of this chapter which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

341.710. Eligibility requirements for extended benefits.

- (1) A worker shall be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the secretary finds that with respect to such week:
 - (a) He is an "exhaustee" as defined in subsection (6) of KRS 341.096, and
 - (b) He has satisfied the requirements of this chapter for the receipt of regular benefits that are applicable to workers claiming extended benefits, including not being subject to a disqualification for the receipt of benefits.
- (2) A worker shall not be eligible for extended benefits for any week if:
 - (a) Extended benefits are payable for such week pursuant to an interstate claim filed in any state under the interstate benefit payment plan, and no extended benefit period is in effect for such week in such state. However, this provision shall not apply with respect to the first two (2) weeks for which extended benefits are payable to a worker pursuant to an interstate claim filed under the interstate benefit payment plan; or
 - (b) The secretary finds that during such period:
 1. He failed to accept any offer of suitable work (as required for extended benefits), or he failed to apply for any suitable work to which he was referred by the secretary; or
 2. He failed to actively engage in seeking work as defined in this section.
- (3) Any individual who has been found ineligible for extended benefits by reason of the provisions set forth in this section shall be denied benefits for the week in which such failure occurred and thereafter until he has been employed in each of four (4) subsequent weeks (whether or not consecutive) and has earned at least four (4) times his weekly benefit rate in bona fide full-time covered employment.
- (4) For the purpose of this section, a worker shall be treated as actively engaged in seeking work during any week if:
 - (a) Such worker has engaged in a systematic and sustained effort to obtain work during such week, and
 - (b) Such worker furnishes tangible evidence that he has engaged in such effort during such week.
- (5) The secretary shall refer any claimant entitled to receive extended benefits to any suitable work which meets the criteria as required in KRS 341.712 for workers claiming extended benefits.
- (6) Notwithstanding any other provisions of this chapter, if the benefit year of any worker ends within an extended benefit period, the remaining balance of extended benefits that such worker would, but for

this section, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced (but not below zero (0)) by the product of the number of weeks for which the worker received any amounts as trade adjustment allowances within that benefit year, multiplied by the worker's weekly benefit amount for extended benefits.

341.712. Suitable work standards for extended benefit claimants.

- (1) No work shall be deemed to be suitable work for a worker making a claim for extended benefits, nor a disqualification imposed for refusal thereof, which does not accord with the labor standard provisions required by 26 U.S.C. 3304(a)(5) (Section 3304(a)(5) of the Internal Revenue Code of 1954) and set forth herein under KRS 341.100, or if a worker would not be denied benefits by reason of the requirements set forth in KRS 341.350 as required by 26 U.S.C. 3304(a)(8) (Section 3304(a)(8) of the Internal Revenue Code of 1954).
- (2) For purposes of this section, the term "suitable work" shall mean, with respect to any worker, any work which is within such worker's capabilities, provided, however, that the gross average weekly remuneration payable for the week must exceed the sum of:
 - (a) The worker's extended weekly benefit amount as determined under this chapter, plus
 - (b) The amount, if any, of supplemental unemployment benefits as defined in 26 U.S.C. 501(c)(17)(D) (Section 501(c)(17)(D) of the Internal Revenue Code of 1954) payable to such worker for such week; and further
 - (c) Pays wages not less than the higher of:
 1. The minimum wage provided by 29 U.S.C. 206 (Section 6(a)(1) of the Fair Labor Standards Act of 1938) without regard to any exemption; or
 2. The applicable state or local minimum wage;
 - (d) Provided, however, that no worker shall be denied extended benefits for failure to accept an offer of or apply for any job which meets the definition of suitability as described above if:
 1. The position was not offered to such worker in writing or was not listed with the employment service; or
 2. Such failure could not result in a denial of benefits under the definition of suitable work for regular benefit claimants as provided in this chapter to the extent that such criteria of suitability in that section are not inconsistent with the provisions of this subsection; or
 3. The worker furnishes satisfactory evidence to the secretary that his prospects for obtaining work in his customary occupation within a reasonably short period are good. If such evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such worker shall be made in accordance with the definition of suitable work for regular benefit claimants without regard to the definition specified in this section.

341.720. Weekly extended benefit rate.

The weekly extended benefit rate payable to a worker for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit rate payable to him during his applicable benefit year.

341.730. Total extended benefit amount.

The total extended benefit amount payable to any eligible worker with respect to his applicable benefit year shall be the least of the following amounts:

- (1) Fifty percent (50%) of the maximum amount of regular benefits which were payable to him under this chapter in his applicable benefit year; or
- (2) Thirteen (13) times the weekly benefit rate which was payable to him under this chapter for a week of total unemployment in the applicable benefit year.

341.735. Reduction of extended benefit amount.

Notwithstanding any state statute to the contrary and to the extent permitted by federal law, for any week during a period in which federal payments to states under section 204 of the federal-state Extended Unemployment Compensation Act of 1970 are reduced under an order issued under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177):

- (1) The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be reduced by an amount equivalent to one-half ($\frac{1}{2}$) of the federal reduction and the resultant weekly amount, if not a full dollar amount, shall be adjusted to the nearest multiple of one dollar (\$1.00);
- (2) The total extended benefit amount payable to any eligible worker with respect to his applicable benefit year shall be reduced by an amount equivalent to the aggregate of the reductions under subsection (1) of this section in the weekly amounts paid to the individual; and
- (3) Subject employers, except governmental entities as defined in KRS 341.069, shall be charged, in addition to the amount of regular benefits chargeable under KRS 341.530, the difference of the amount of extended benefits paid the worker under this section and the amount of the federal payment after reduction. Governmental entities excepted by this subsection shall be charged for regular and extended benefits in accordance with KRS 341.530.

341.740. Beginning and termination of extended benefit period.

Whenever an extended benefit period is to become effective in this state as a result of a state "on" indicator, or an extended benefit period is to be terminated in this state as a result of a state "off" indicator, the secretary shall make an appropriate public announcement.

LEVY AND DISTRAINT

341.800. Demand for payment; levy upon and sale of property of subject employer.

- (1) In addition to any other remedy provided by the laws of the Commonwealth, if any subject employer assessed or determined liable for the payment of contributions, including penalties and interest, refuses to pay contributions when due and has not sought administrative or judicial review of the assessment or determination as provided for in this chapter, or if such subject employer has exhausted or abandoned administrative or judicial review provided in this chapter so that the assessment or determination is final, due and owing, then the secretary or his delegate may cause a demand to be made on the subject employer for the payment thereof. If the contributions, including interest and

penalties, remain unpaid for ten (10) days after demand, then the secretary or his delegate may collect the contributions, including interest and penalties, and the costs of such collection by levy upon all non-exempt real and personal property, disposable earnings, and right to property, belonging to the subject employer or on which there is a lien provided in this chapter for the payment of such contributions.

- (2) As soon as practicable after seizure of property, notice in writing shall be given by the secretary or his delegate to the owner of the property. The notice shall be given to the owner either in person or by certified mail to his last known address. Such notice shall specify the sum demanded and shall contain, in the case of personal property, an account of the property seized and, in the case of real property, a description with reasonable certainty of the property seized.
- (3) The secretary or his delegate shall as soon as practicable after the seizure of the property cause a notification of the sale of the seized property to be published in the newspaper with the largest circulation within the county wherein such seizure is made. Such notice shall be published once each week for three (3) successive weeks. In addition, such notice shall be posted at the courthouse and three (3) other public places in the county where the seizure is made for fifteen (15) days next preceding sale. The notice shall specify the property to be sold, and the time, place, manner, and condition of the sale thereof.
- (4) If any property liable to levy is not divisible, so as to enable the secretary or his delegate by sale of a part thereof to raise the whole amount of the contributions, penalty, interest and cost of the levy, the whole of such property shall be sold.
- (5) The time of sale shall not be less than thirty (30) nor more than ninety (90) days from the time the seizure is made. The place of sale shall be within the county in which the property is seized, except by special order of the secretary.
- (6) The sale shall not be conducted in any manner other than by public auction, or by public sale under sealed bids. In the case of the seizure of several items of property, the secretary or his delegate may offer such items for sale separately, in groups, or in the aggregate and accept whichever method produces the highest aggregate amount.
- (7) The secretary or his delegate shall determine whether payment in full shall be required at the time of acceptance of a bid, or whether a part of such payment may be deferred for such period, not to exceed one (1) month, as he may determine to be appropriate. If payment in full is required at the time of acceptance of a bid and is not then and there paid, the secretary or his delegate shall forthwith proceed to again sell the property as provided in subsection (6) of this section. If the conditions of the sale permit part of the payment to be deferred, and if such part is not paid, within the prescribed period, suit may be instituted in the Franklin Circuit Court or the circuit court of the county where the sale was conducted against the purchaser for the purchase price or such part thereof as has not been paid, together with interest at the rate of twelve percent (12%) per annum from the date of the sale; or, in the discretion of the secretary, the sale may be declared to be null and void for failure to make full payment of the purchase price and the property may again be advertised and sold as provided in this section. In the event of such readvertisement and sale, any new purchaser shall receive such property or rights to property, free and clear of any claim or right of the former defaulting purchaser, of any nature whatsoever, and the amount paid upon the bid price by such defaulting purchaser shall be forfeited.

- (8) If the secretary or his delegate determines that any property seized is liable to perish or become greatly reduced in price or value by keeping, or that such property cannot be kept without great expense, he shall appraise the value of such property and, if the owner of the property can be readily found, the secretary or his delegate shall give him notice of such determination of the appraised value of the property. The property shall be returned to the owner if, within such time as may be specified in the notice, the owner pays to the secretary or his delegate an amount equal to the appraised value, or gives bond in such form, with such sureties, and in such amount as the secretary or his delegate determines to be appropriate in the circumstances. If the owner does not pay such amount or furnish such bond in accordance with this subsection, the secretary or his delegate shall as soon as practicable make public sale of the property without regard to the advertisement requirements or the time limitations contained in subsections (3) and (5) of this section.
- (9) No proceedings under this section shall be commenced more than five (5) years after the assessment or determination becomes final.
- (10) The term "levy" as used in KRS 341.800 to 341.830 includes the power of distraint and seizure. A levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the secretary or his delegate may levy upon property or rights thereto, he may seize and sell such property and rights to property, whether real, personal, tangible or intangible.

341.805. Notification of levy or release.

- (1) Levy may be made with respect to any unpaid contributions including penalties and interest only after the cabinet has given notice and demand to the subject employer in writing of the intention to make such levy. Such notice and demand shall be given in person, or shall be sent by certified mail to the employer's last known address, no less than ten (10) days before the date of levy.
- (2)
 - (a) The effect of a levy on salary or wages payable to or received by a person shall be continuous from the date such levy is first made until the liability out of which such levy arose is satisfied or becomes unenforceable by reason of lapse of time; and
 - (b) With respect to a levy described in paragraph (a) of this subsection, the cabinet shall promptly release the levy when the liability out of which such levy arose is satisfied or becomes unenforceable by reason of lapse of time and shall promptly notify the person upon whom such levy was made that such levy has been released.

341.810. Surrender of property upon which levy made; effect of surrender or failure to do so.

- (1) Any person in possession of or obligated with respect to property or rights to property subject to levy upon which a levy has been made shall, upon demand of the secretary or his delegate, surrender such property or rights or discharge such obligation to the secretary or his delegate, except such part of the property or rights as is, at the time of such demand, subject to an attachment or execution under any judicial process.
- (2) Any person who fails or refuses to surrender any property or rights to property subject to levy shall be liable in his own person and estate to the Commonwealth in a sum equal to the value of the property or

rights not so surrendered, but not exceeding the amount of contributions, interest and penalties for the collection of which such levy has been made, together with costs and interest on such and at the rate of fifteen percent (15%) per annum from the date of such levy. Any amount other than costs recovered under this subsection shall be credited against the subject employer's liability for the collection of which such levy was made.

- (3) Any person in possession of or obligated with respect to property or rights to property subject to levy upon which a levy has been made who, upon demand by the secretary or his delegate, surrenders such property or rights to property or discharges such obligation to the secretary or his delegate shall be discharged from any obligation or liability to the delinquent employer with respect to such property or rights to property arising from such surrender or payment.

341.815. Right of redemption.

- (1) Any employer whose property has been levied upon shall have the right to pay the amount due, together with the expense of the proceeding, to the secretary or his delegate at any time prior to the sale thereof and upon such payment the secretary or his delegate shall cause such property to be restored to him and all further proceedings in connection with the levy on such property shall cease from the time of such payment.
- (2) The owner of any real property sold as provided in KRS 341.800, his heirs, executors, or administrators, or any person having an interest therein, or a lien thereon, or any person in his behalf, shall be permitted to redeem the real property sold or any particular tract of such property, at any time within one hundred twenty (120) days after the date of the sale. Such property or tract of property shall be permitted to be redeemed only upon payment to the purchaser, or in case he cannot be found in the county in which the property to be redeemed is situated, then to the secretary or his delegate, for the use of the purchaser, his heirs, or assigns, the amount paid by such purchaser and interest thereon at the rate of twenty percent (20%) per annum from the date of sale.
- (3) In the case of property sold pursuant to KRS 341.800 the secretary or his delegate shall give to the purchaser certificate of sale upon payment in full of the purchase price. The certificate shall set forth a description of the property purchased, for whose contributions the property was sold and the price paid therefor.
- (4) In all cases where property is sold pursuant to KRS 341.800, except real property, the certificate of sale issued pursuant to subsection (3) of this section shall have the following effect:
 - (a) Shall be prima facie evidence of the rights of the secretary or his delegate to make such sale, and of the regularity of the proceeding of the sale;
 - (b) Shall transfer to the purchaser all right, title and interest of the subject employer in and to the property sold;
 - (c) If such property consists of stock, shall be notice when received, to any corporation, company, or association of such transfer, and shall be authority to such corporation, company, or association to record the transfer on its books and records in the same manner as if the stocks were transferred or assigned by the party holding the same, in lieu of any prior certificate, which shall be void, whether cancelled or not;
 - (d) If the subject of sale is securities or other evidence of debt, shall be a good and valid receipt to the person holding the same,

as against any person holding or claiming to hold possession of such securities or other evidences of debt; and

- (e) If such property consists of a motor vehicle, shall be notice, when received by any public official charged with the registration of title to motor vehicles, of such transfer and shall be authority to such official to record the transfer on his books and records in the same manner as if title to such motor vehicle were transferred or assigned by the party holding the same, in lieu of any original or prior title, which shall be void, whether cancelled or not.
- (5) In the case of any real property sold pursuant to KRS 341.800 and not redeemed in the manner and within the time provided in subsection (2) of this section, the secretary or his delegate shall execute in accordance with the laws of the Commonwealth, to the purchaser of such real property upon surrender of the certificate of sale, a deed to the real property so purchased by him, reciting the facts set forth in the certificate. The deed executed pursuant to this subsection shall have the following effect:
 - (a) Shall be prima facie evidence of the rights of the secretary or his delegate to make such sale, and of the regularity of the proceedings of the sale; and
 - (b) If the proceedings of the secretary or his delegate have been substantially in accordance with the provisions of KRS 341.800, such deed shall be considered and operate as a conveyance of all right, title and interest the employer has in and to the real property thus sold at the time the lien of the Commonwealth attached thereto.
- (6) A certificate of sale of personal property given or a deed to real property executed pursuant to this section shall discharge such property from all liens, encumbrances, and titles over which the lien of the Commonwealth, with respect to which the levy was made, had priority.

341.820. Release or return of property.

- (1) It shall be lawful for the secretary or his delegate, under administrative regulations prescribed by the secretary, to release all or part of the property or rights to property levied upon where the secretary or his delegate determines that such action will facilitate the collection of the liability, but such release shall not operate to prevent any subsequent levy.
- (2) If the secretary or his delegate determines that property has been wrongfully levied upon, it shall be lawful for the secretary or his delegate to return the specific property levied upon or an amount of money equal to the amount of money received by the Commonwealth from a sale of such property.
- (3) Property shall be returned immediately. If such property is not returned immediately, or if such proceeds of sale are not returned immediately, then the owner of such property shall have a period of four (4) years in which to initiate action for its return.

341.825. Right to copy books and records.

- (1) If a levy has been made or is about to be made on any property or right to property, any person having custody or control of any books or records containing evidence or statements relating to the property or right to property subject to levy shall, on demand of the secretary or

his delegate, exhibit such books or records to the secretary or his duly authorized representative.

- (2) The secretary or his delegate may make copies of such books or records at the cabinet's expense.

341.830. Assessment against transferee of a fraudulent conveyance made with intent to hinder or evade collection of contribution due from transferor.

- (1) When the cabinet reasonably believes that any employer has divested himself by gift, conveyance, assignment, transfer of, or charge upon any property, whether real, personal, tangible or intangible, with the intent to hinder or evade the collection of any contributions assessed or to be assessed by the cabinet or declared by the employer on a report filed with the cabinet, any transferee of such property may be assessed by the cabinet an amount equal to the lesser of the amount of contributions assessed against the transferor employer or the fair market value of the property so transferred. However, no assessment shall be made pursuant to this section against a transferee who takes the property for full and valuable consideration in money or money's worth, unless such transferee had notice of the intent of the transferor employer to hinder or evade the collection of any contributions.
- (2) Any assessment made by the cabinet against a transferee pursuant to subsection (1) of this section is, except as provided in this section, subject to the same provisions and limitations as in the case of the contributions for which the liabilities were incurred.
- (3) The period of limitation for assessment of any liability against a transferee pursuant to subsection (1) of this section shall be as follows:
 - (a) In the case of an initial transferee, within one (1) year after the expiration of the period of limitation for assessment against the transferor employer; and
 - (b) In the case of the liability of a transferee, within one (1) year after the expiration of the period of limitation for assessment against the preceding transferee, but not more than three (3) years after the expiration of the period of limitation for assessment against the initial transferor employer.
- (4) The notice of any assessment against a transferee made pursuant to subsection (1) of this section shall be either given to the transferee in person or sent by mail to such transferee's last known address.

341.835. Fines, penalties and interest credited to administrative fund.

All fines, penalties and interest on delinquent contributions collected under KRS 341.800 to 341.830 shall be credited to the unemployment compensation administration fund to be used for the administration of this chapter.

CONSTRUCTION OF ACTS

341.980. Construction of this chapter.

- (1) In enacting this chapter, it is the intention of the General Assembly to comply with the requirements of the Federal Unemployment Tax Act and all subsequent amendments including, but not limited to P.L. 94-566 and P.L. 95-19. Contributions or reimbursements required herein on account of previously uncovered services performed prior to January 1, 1978 as defined in section 121 of the Federal Unemployment Compensation Act of

1976, as amended, and benefits based on such services in employment defined herein shall be payable in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other service subject to this chapter. Interpretations of the provisions contained herein or elsewhere in this chapter should be consistent with such federal act and interpretations thereof and substantial weight should be given to the commentary contained in those documents entitled "Draft Language and Commentary to Implement the Unemployment Compensation Amendments of 1976 - P.L. 94-566," "Draft Legislation to Implement the Employment Security Amendments of 1970...H. R. 14705" and "Manual of State Employment Security Legislation, Revised September 1950," published by the United States department of labor, manpower administration.

- (2) If Public Law 94-566 or the federal act it amends shall for any cause become inoperative in its application, or stayed pendente lite, as to services performed by employees of this state or one (1) or more of its counties, cities or political subdivisions, then, the provisions of KRS 341.050(1)(d), 341.070(3) and 341.277, by virtue of that fact, shall, likewise and to the same extent, become inoperative as to such services. Any unobligated contributions in the unemployment insurance fund paid into the fund by such governmental entity, or returned to this state by the United States treasurer because such federal law becomes inoperative, shall be refunded to the governmental entity contributors proportionately to their unexpended contributions under regulations of the commission. Nothing in this subsection shall waive payments accrued in lieu of contributions.

341.982. Construction of Acts, 1978, chapter 389.

Nothing in Acts 1978, chapter 389, shall be construed to be more stringent than the federal law covering this subject matter.

PENALTIES

341.990. Penalties.

- (1) Any employee of any state department who violates any of the provisions of KRS 341.110 to 341.230 shall be fined not less than twenty dollars (\$20.00) nor more than two hundred dollars (\$200) or imprisoned for not more than ninety (90) days, or both.
- (2) Any person subpoenaed to appear and testify or produce evidence in an inquiry, investigation or hearing conducted under this chapter who fails to obey the subpoena shall be fined not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100) or imprisoned for not more than thirty (30) days, or both.
- (3) Any subject employer, or officer or agent of a subject employer, who violates subsection (1) of KRS 341.470 shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or imprisoned for not more than six (6) months, or both for each offense.
- (4) Any person who violates subsection (2) of KRS 341.470 shall be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500) or imprisoned for not more than six (6) months, or both, for each offense.
- (5) Any person who knowingly makes a false statement or representation of a material fact or knowingly fails to disclose a material fact to the cabinet to obtain or increase any benefit under this chapter or under an employment security law of any other state, or of the federal government, either for himself or for any other person, business

entity, or organization shall be guilty of a Class A misdemeanor unless the value of the benefits procured or attempted to be procured is one hundred dollars (\$100) or more, in which case he shall be guilty of a Class D felony.

- (6)
 - (a) Any person who knowingly makes a false statement or representation or who knowingly fails to disclose a material fact to prevent or reduce the payment of benefits to any worker entitled thereto, or to avoid becoming or remaining subject to this chapter, or to avoid or reduce any payment required of an employing unit under this chapter shall be guilty of a Class A misdemeanor unless the liability avoided or attempted to be avoided is one hundred dollars (\$100) or more, in which case he shall be guilty of a Class D felony.
 - (b) Any person who willfully fails or refuses to furnish any reports required, or to produce or permit the inspection or copying of records required in this chapter shall be fined not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00) or imprisoned for not more than thirty (30) days, or both. Each such false statement, representation or failure and each day of such failure or refusal shall constitute a separate offense.
- (7) In any prosecution for the violation of subsection (5) or (6) of this section it shall be a defense if the person relied on the advice of an employee or agent of the cabinet.
- (8) Any person who willfully violates any provision of this chapter or any rule or regulation under it, the violation of which is made unlawful or the observance of which is required under the terms of this chapter, and for which no specific penalty is prescribed in this chapter or in any other applicable statute, shall be fined not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00). Each day such violation continues shall constitute a separate offense.

KENTUCKY UNEMPLOYMENT COMPENSATION REGULATIONS

The following regulations of the Secretary of the **Workforce Development Cabinet** are hereby published in accordance with provision of KRS 341.150 and represent all of the regulations currently required by the Unemployment Compensation Act.

REGULATIONS

787 KAR 1:010. Application for employer account; reports
787 KAR 1:020. Change of status; discontinuance of business
787 KAR 1:030. Employer contributions
787 KAR 1:040. Posting notice to employees
787 KAR 1:050. Social Security number required of employees
787 KAR 1:060. Separation for cause; reports
787 KAR 1:070. Reasonable time for protesting claim
787 KAR 1:080. Labor dispute or strike; notification
787 KAR 1:090. Claimant's reporting requirements
787 KAR 1:100. Week of unemployment.
787 KAR 1:110. Appeals
787 KAR 1:120. Fees for representing claimant
787 KAR 1:140. Unemployment insurance fund payments
787 KAR 1:150. Interstate claimants.
787 KAR 1:160. Time extension for reports and notices
787 KAR 1:170. Cash value of board and lodging
787 KAR 1:180. Employer's records.
787 KAR 1:190. Recoupment and recovery
787 KAR 1:200. Maximum weekly benefit rate
787 KAR 1:210. Employer contribution rates
787 KAR 1:220. Required reports and due dates
787 KAR 1:230. Due dates
787 KAR 1:240. Fraud disqualifications
787 KAR 1:250. Release of notice of levy
787 KAR 1:260. Voluntary election of coverage
787 KAR 1:270. Covered employment
787 KAR 1:280. Limitation on pension deductions
787 KAR 1:290. Contract construction rates
787 KAR 1:300. Successorship
787 KAR 1:310. Claimant profiling

787 KAR 1:010. Application for employer account; reports.

RELATES TO: KRS 341.190

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation requires each employing unit to make application for an employer account and to make other additional reports as required by the division.

Section 1. Each employing unit having in the state in covered employment one (1) or more workers shall request from the Division of Unemployment Insurance an "Application for Unemployment Insurance Employer Reserve Account" UI-1 (Rev. 6/91), incorporated by reference herein, and shall submit this form to the division providing all information requested in the instructions to this form.

Section 2. Each employing unit shall make additional reports as required on the forms prescribed by the division in accordance with the instructions contained on the forms. These forms include UI-1S Supplemental Application for Unemployment Insurance Employer Reserve Account (Rev. 1/93), UI-3 Employer's Quarterly Unemployment Wage and Tax Report (Rev. 4/94), UI-3R Reimbursing Employer's Quarterly Unemployment Wage Report (Rev. 4/94), UI-3S Employer's Quarterly Unemployment Wage and Tax Substitute Report (Rev. 8/93), UI-3X Employer's Quarterly Unemployment Wage and Tax Report (yellow express envelope) (Rev. 4/94), UI-3.1A Summary Contribution Report (Rev. 10/92), UI-3.2 Request to Place Subject Employer's Account in Inactive Status (Rev. 1/90), UI-14B Employer Schedule of Wage Report Adjustments (Rev. 1/90), UI-21 Report of Change of Ownership or Discontinuance of Business in Whole or Part (Rev. 10/93), UI-47 Claim for Refund of Contributions (Rev. 8/93), UI-74 Application for Partial Payment Agreement (Rev. 4/88), UI-412A Notice to Employer of Claim for Unemployment Insurance Benefits (Rev. 9/92), UI-203 Overpayment and Fraud Detection (Rev. 9/94), UI-414 or UI-414A Report of Hire or Return to Work (Rev. 1-95) and are incorporated by reference the same as if reproduced in full herein. These forms are on file for public inspection in the Office of the Commissioner for Employment Services, 275 E. Main Street, 2W, Frankfort, Kentucky 40621.

787 KAR 1:020. Change of status; discontinuance of business.

RELATES TO: KRS 341.115

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation requires subject employers to notify the division of any change of ownership or control of their business.

Section 1. Subject employers shall notify the Division of Unemployment Insurance within fifteen (15) days of any change in ownership or control of their business, whether in whole or in part, or of the discontinuance of their business.

787 KAR 1:030. Employer contributions.

RELATES TO: KRS 341.260, 341.300

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation sets the due dates upon which employer contributions shall be payable to the division.

Section 1. The initial due date for payment of contributions by an employing unit shall be the last day of the month following the close of the calendar quarter during which the employing unit first becomes a subject employer. Thereafter, except as provided in Section 2 of this administrative regulation, the due date for contributions shall be the last day of the month following the calendar quarter for which they are payable.

Section 2. The due date for payment of contributions shall be extended if a subject employer has erroneously paid contributions due under KRS Chapter 341 to another state or federal agency, or if an authorized representative of the division has misinformed an employer as to his liability or erroneously determined an employer's status on the basis of correct reports furnished to the division by the employer or his representative. In these cases, the due date shall be the 20th day following the mailing date of the first notice issued to the employer advising him of any amount due the division.

Section 3. Contributions shall be considered paid as of the date on which they are received by the Division of Unemployment Insurance as defined in 787 KAR 1:230.

787 KAR 1:040. Posting notice to employees.

RELATES TO: KRS 341.115

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation requires the division to promptly notify an employing unit of its liability and to furnish employers with posters informing employees of their unemployment insurance rights.

Section 1. The Division of Unemployment Insurance shall promptly notify an employing unit of any determination as to its liability as a subject employer.

Section 2. The division shall furnish each subject employer with posters (UI-5.1) informing the workers that the employer is a subject employer under the Kentucky Unemployment Insurance Law and of their potential rights to claim benefit payments for weeks of partial unemployment. The employer shall post and maintain the posters at conspicuous places on the premises at which his payroll records are maintained.

787 KAR 1:050. Social Security number required of employees.

RELATES TO: KRS 341.115
STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation requires each worker engaged in covered employment to secure a Federal Social Security Account Number and report the number to the employing unit.

Section 1. Each worker engaged in covered employment for a subject employer shall procure a Federal Social Security Account Number and report his number to every subject employer for whom he is engaged in covered employment.

Section 2. Each worker who is engaged in covered employment, for a subject employer, who does not have a Federal Social Security Account Number shall file an application therefor not later than three (3) days after the first day on which he is engaged in covered employment for a subject employer. It shall be the duty of each employer to procure the appropriate form for application for a Social Security Account Number and to furnish the application form to each worker engaged in covered employment in his employ who does not have such a number.

787 KAR 1:060. Separation for cause; reports.

RELATES TO: KRS 341.370, 341.530
STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation requires the employing unit to notify the division of a worker's separation from employment for cause by returning notices sent to the employer after an initial or reopened claim for benefits has been filed.

Section 1. Notice to Employers.

- (1) When an initial claim for benefits is filed by a claimant or when a reopened claim for benefits is filed by a claimant who has been employed since last claiming benefits, the Division of Unemployment Insurance shall immediately notify the claimant's most recent employer of the filing on Form UI-412A.
- (2) If the claimant has worked for his next most recent employer in less than ten (10) weeks, the division shall also notify his next most recent employer of the claim filing on Form UI-412A.
- (3) If the claimant worked for neither his most recent nor next most recent employer in each of ten (10) weeks, the most recent employer for whom the claimant worked in each of ten (10) weeks shall be notified of the filing on Form UI-412A.

Section 2. If the claimant was separated from any notified employer's employ for a reason other than lack of work, the employer shall complete and return the "employer's notice of initial claim" or "employer's notice of reopened claim" to the local office indicated on the notice.

787 KAR 1:070. Reasonable time for protesting claim.

RELATES TO: KRS 341.370(4), 341.530(3)
STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation defines the term "reasonable time" within which an employer shall protest a claim by a former worker. If the employer is not the most recent employer he shall be given fifteen (15) days within which to protest if he has not received Form UI-412A, "employer's notice of initial claim" or "employer's notice of reopened claim".

Section 1. Except as provided in Section 2 of this administrative regulation the reasonable time referred to in KRS 341.370(4) and 341.530(3) shall not extend beyond ten (10) days after the date of the first notice to the employer from the department that a claim has been filed. In computing this ten (10) day period, the day following the date of mailing of the notice shall be considered the first day, and the date the employer's return notice is received by the department as defined in 787 KAR 1:230 shall be considered the date it is received by the department.

Section 2. If the employer is not the worker's most recent employer and has not received Form UI-412A as provided in 787 KAR 1:060, the reasonable time referred to in KRS 341.530(3) shall not extend beyond fifteen (15) days after the date of first notice to the employer from the department that a claim has been filed. In computing the fifteen (15) day period the day following the date of mailing of the notice shall be considered the first day, and the day the employer's return notice is received by the department as defined in 787 KAR 1:230 shall be considered the date it is received by the department.

787 KAR 1:080. Labor dispute or strike; notification.

RELATES TO: KRS 341.360
STATUTORY AUTHORITY: KRS151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation requires the employer to notify the division when a labor dispute or strike begins and ends.

Section 1. When an initial claim for benefits or a reopened claim for benefits is filed by a claimant, the Division of Unemployment Insurance shall immediately notify the claimant's most recent employer of the filing on Form UI-412A. If the claimant is unemployed because of a strike or other bona fide labor dispute, the employer, in addition to the notice required under KRS 341.360(1), shall indicate on the form the reason for such claimant's unemployment and return the form to the division within ten (10) days after the date appearing thereon as the date of mailing. In computing the ten (10) day period the day following the date of mailing of the notice shall be considered the first day, and if the tenth day falls on a day during which the division's office is closed, the next day thereafter on which the office is open shall be considered the tenth day.

Section 2. Within ten (10) days after the termination of an alleged strike or labor dispute the employer shall notify the division in writing of the termination. In computing the ten (10) day period the day following the termination of the alleged strike or labor dispute shall be considered the first day, and if the tenth day falls on a day during which the division's

office is closed, the next day thereafter on which the office is open shall be considered the tenth day.

787 KAR 1:090. Claimant's reporting requirements.

RELATES TO: KRS 341.350, 341.380

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation sets forth the registration and reporting requirements that the claimant must meet to draw benefits and the date when the claim will be valid. It further sets out the length of time a claim may be backdated and the procedures for mail claims.

Section 1. Registration for Work.

- (1) A worker shall be registered for work with the state employment service before he shall be eligible to receive benefits.
- (2) At the time a claimant completes an initial application for benefits, he shall be assigned a group classification code (A, B, C, or D) based upon his reemployment prospects.
 - (a) Group A consists of claimants who definitely have depended on their work for their individual or family support and whose employment record indicates a firm attachment to the labor market, including workers:
 1. Unemployed due to a temporary layoff with good return prospects but no definite recall date;
 2. With a steady employment record who are unemployed due to lack of work; or
 3. With a highly specialized employment record.
 - (b) Group B includes:
 1. Workers unemployed as a result of a mass layoff who have positive return prospects with their last employer;
 2. Workers unemployed because of a labor dispute in the establishment where they have been employed;
 3. Unemployed workers of a local employer whose performance strongly indicates reemployment for such workers even though a definite recall date has not been set;
 4. Claimants who are working part time with a regular employer but who are eligible for partial benefits; and
 5. Claimants who are members of unions which are responsible for securing their future employment.
 - (c) Group C includes workers whose work record indicates continuing questions of availability or ability for work. Those claimants who provide incomplete information shall be placed temporarily in group C.
 - (d) Group D consists of workers who require closer and more frequent scrutiny of availability and ability questions.
- (3) During any benefit year, a claimant may be assigned a different group classification code if review of his reemployment prospects reveals that a different classification is appropriate.
- (4) The completion of an initial application for benefits shall serve as work registration for group "B" claimants. All other claimants shall report to the state employment service for an in-depth interview and completion of an ES-511 form in order to receive full job placement service. The registration shall remain active for six (6) months from

the date of registration.

Section 2. Initial and Reopened Claims for Benefits.

- (1) In order for a worker to file an initial or reopened claim for benefits he shall report in person with the following proof of identity: social security card, valid driver's license with a photograph or other acceptable photo-identification to a state employment office which serves unemployment insurance claimants to complete an initial claim form and certifications required by the secretary to make a determination as to the worker's benefit eligibility. If any issues regarding the claimant's eligibility as defined in KRS 341.350 or a potentially disqualifying circumstance as defined in KRS 341.360 or 341.370 are detected, a fact-finding interview shall be scheduled at which the claimant may present all facts in support of his application.
- (2) In areas serviced by a full-time state employment office which serves unemployment insurance claimants, the initial or reopened claim shall be dated as of the first day of the week in which the worker first reports to the state employment office for the purpose of filing a claim for benefits.
- (3) In areas serviced by a part-time state employment office which serves unemployment insurance claimants, the initial or reopened claim shall be dated as of the first day of the week in which the worker becomes unemployed provided he reports to the part-time office for the purpose of filing a claim for benefits on the first day the office is open following his last day of work; otherwise the claim shall be dated as of the first day of the week in which the worker reports at a part-time or full-time state employment office which serves unemployment insurance claimants.
- (4) Notwithstanding the provisions of subsections (2) and (3) of this section the initial or reopened claim may be dated as of the first day of any week of unemployment in which the worker worked less than his customary full-time hours for his regular employer, provided the worker reports to a state employment office which serves unemployment insurance claimants for the purpose of filing a claim for benefits within fourteen (14) days after the date he was paid for that week.
- (5) Upon the presentation by the worker of reasons found to constitute good cause for failure to report at an earlier date, the secretary may authorize the backdating of initial or reopened claims in an area serviced by a full-time state employment office which serves unemployment insurance claimants to the first day of a week which ended not earlier than fourteen (14) days prior to the day on which he first reported or indicated his desire to file a claim, and in an area serviced by a part-time state employment office which serves unemployment insurance claimants, to the first day of the week which ended not earlier than twenty-eight (28) days prior to the day on which he first reported.

Section 3. Continued Claims for Benefits.

- (1) In order for a worker, who has filed his initial claim for benefits and has established a benefit year, to file a continued claim for benefits he shall report in person, except as hereinafter provided, to a state employment office which serves unemployment insurance claimants to complete a continued claim form and certification required by the secretary to determine the worker's continued eligibility for benefits as defined in KRS 341.350, 341.360 or 341.370.

- (2) Continued claims for benefits shall cover the week or the two (2) weeks of unemployment (depending on whether the worker is reporting on a weekly or biweekly basis) immediately prior to the date on which they are filed.
- (3) Upon the presentation by the worker of reasons found to constitute good cause for failure to file at an earlier date, the secretary may authorize the backdating of continued claims in an area serviced by a full-time state employment office to cover a week or weeks of unemployment ended not earlier than twenty-eight (28) days prior to the date on which they are filed and in an area serviced by a part-time state employment office which serves unemployment insurance claimants to cover a week or weeks of unemployment ended not earlier than thirty-five (35) days prior to the date on which they are filed.
- (4) Notwithstanding the provisions of subsections (2) and (3) of this section, a continued claim may be dated as the first day of any week of unemployment in which the worker worked less than his customary full-time hours for his regular employer and for which week he filed a continued claim, provided the worker reports to a state employment office which serves unemployment insurance claimants for the purpose of filing a claim for benefits within fourteen (14) days after the date he was paid for that week.
- (5) Continued claims for partial benefits shall be certified as to earnings when so required by the secretary, except that the failure of an employer to properly certify earnings shall not result in a denial of benefits otherwise due under the law.

Section 4. Mail Claims.

- (1) The secretary may authorize an individual to file his continued claims by mail if reporting in person would require expenditure of an unreasonable amount of travel or money. A continued claim shall cover the week or weeks indicated on the claim form.
- (2) Claims filed by mail shall be considered filed on the day they are deposited in the mail and postmarked. The provisions of this administrative regulation governing the dating and backdating of continued claims filed in areas serviced by a full-time state employment office shall also apply to claims filed by mail, and unless the claims are filed within the time prescribed herein, they shall not be allowed.

Section 5. Claims by Reemployed Workers. Notwithstanding the provisions of Section 3 of this administrative regulation, a worker, who having filed his initial claim for benefits and having established a benefit year and who by reason of having returned to full-time employment is unable to report in person to a state employment office, may file a continued claim for benefits by completing a continued claim form and certifications required by the secretary to determine the worker's continued eligibility for benefits and submitting the form by mail to the Division of Unemployment Insurance. The continued claim shall cover the week of unemployment indicated on the claim form provided that the week of unemployment ended not earlier than thirty-five (35) days prior to the date on which the claim was deposited in the mail.

Section 6. Eligibility Review. An unemployed worker claiming benefits shall report in person to a state employment office, as directed, on a periodic basis for the purpose of continued benefit eligibility review.

Section 7. Failure to Comply with Administrative Regulations. Notwithstanding any other provisions of this administrative regulation, if the secretary finds that the failure of any worker to file a claim for benefits, and register for work within the specified time, was due to the failure on the part of the employer to comply with any of the provisions of these administrative regulations, or to coercion or intimidation exercised by the employer to prevent the prompt filing of a claim or to failure by the division's personnel to discharge necessary responsibilities, the worker shall have fourteen (14) days after he has received appropriate notice of the findings of the secretary, within which to file a claim, provided that no claim shall be allowed which is filed later than thirteen (13) weeks subsequent to the end of the actual or potential benefit year involved.

787 KAR 1:100. Week of unemployment.

RELATES TO: KRS 341.080

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: KRS 341.080(3) provides that the cabinet shall prescribe by administrative regulation the period of time which shall constitute a week of unemployment for the purpose of administering the Unemployment Insurance Program in accordance with KRS Chapter 341. The purpose of this administrative regulation is to satisfy the statutory requirement.

Section 1. A "week of unemployment" shall be a calendar week of seven (7) consecutive calendar days, beginning 12:01 a.m., Sunday and ending 12 midnight the following Saturday. A week of unemployment beginning in a benefit year shall be deemed to be wholly in that benefit year.

787 KAR 1:110. Appeals.

RELATES TO: KRS 131.570(1), 341.430(2), 341.440, 341.450(2)

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation sets up the appeals process and general rules for the conduct of hearings.

Section 1. Appeals to Referee.

- (1) The presentation of an appeal to a referee.
 - (a) Any interested party wishing to appeal to a referee from a notice of determination, or from a notice of income tax refund intercept issued by the Revenue Cabinet in full or partial satisfaction of an outstanding benefit overpayment may do so by filing with the Division of Unemployment Insurance or its authorized representative a written statement clearly indicating the party's intention to appeal within the time limits prescribed by statute.
 - (b) An appeal to a referee shall be considered filed at the time it is received by the department as defined in 787 KAR 1:230.
- (2) Notification of hearings. All hearings shall be scheduled promptly and notices thereof shall be mailed to all interested parties at least seven (7) days before the date of hearing specifying the time and place of hearing, except that, the referee may, when the exigencies of the situation in his judgment require, set a case for hearing before the expiration of seven (7) days, only then, however, upon agreement of all

interested parties. Any party may request the rescheduling of a hearing for compelling circumstances, subject to the approval or denial of the referee.

- (3) Disqualification of referees. No referee shall participate in the hearing of an appeal in which he has an interest. Challenges to the interest of any referee shall be heard and decided by the commission.
- (4) Hearing of appeals.
 - (a) The claimant and any other party to the appeal may present evidence as may be pertinent and may question the opposite party and his witnesses. The referee shall, if he deems it necessary to secure full information on the issues, examine each party who appears and his witnesses. The referee may take any additional evidence which he deems necessary; but, if additional evidence is taken, all interested parties shall be afforded an opportunity of examining and refuting the same.
 - (b) The parties to an appeal, with the consent of the referee, may stipulate the facts involved, in writing. The referee may decide the appeal on the basis of this stipulation or may schedule a hearing and take further evidence as he deems necessary.
 - (c) The hearing shall be scheduled and held at a place where the claimant can attend without undue expense or inconvenience, giving consideration to the claimant's place of employment.
 - (d) The hearing may be conducted via teleconference if the residence of the claimant and his former employer's place of business are not in close geographic proximity, or if other circumstances warrant.
 - (e) The referee may in his discretion grant a continuance of a hearing in order to secure necessary evidence.
 - (f) Parties to a teleconference hearing who wish to introduce documents or written materials into the record at the referee hearing, must immediately mail copies of the documents to the referee and the opposing party. Failure to provide both the referee and the opposing party with copies of the evidence may result in its being excluded from the record.
- (5) Decisions.
 - (a) After the hearing is concluded the referee shall promptly set forth in writing his finding of facts on the issues involved, his decision and the reasons therefor; provided, however, that if the appellant fails to appear and prosecute his appeal, the referee may summarily affirm the determination.
 - (b) Copies of the decision shall be mailed to the claimant and other parties to the appeal, and a copy shall be retained in the division's files.
 - (c) The mechanical recording of the hearing shall be retained in the division's files pending further appeal. If no appeal is initiated, the recording shall be destroyed sixty (60) days from the date the final administrative decision is mailed.
 - (d) Any referee decision may be superseded and amended after being released in order to correct obvious technical errors or omissions. The corrected decision shall have the same appeal rights as the decision which it amends or corrects.
 - (e) If the decision is such that previously awarded benefits are to be denied either retroactively or forthwith, then a stop payment directive shall be issued to the division by the referee on the date the decision is mailed to the claimant.

Section 2. Appeals to the Commission From a Referee Decision.

- (1) Presentation of an appeal to the commission.
 - (a) Any interested party wishing to appeal to the commission from a decision of a referee may make written application with the commission, the division or its authorized representative for leave to appeal in any form which clearly indicates the party's intention to appeal. A notice of application for leave to appeal shall be mailed by the division to other interested parties.
 - (b) An application for leave to appeal shall be considered initiated and filed at the time it is received by the department as defined in 787 KAR 1:230.
 - (c) The commission may grant or deny the application for leave to appeal without a hearing or may notify the parties to appear at a specified place and time for argument on the application.
- (2) Hearing of appeals.
 - (a) Except in instances where the commission orders cases removed to it from a referee, all appeals to the commission may be heard upon the records of the division and the evidence and exhibits introduced before the referee. In the hearing of an appeal on the record, the parties may, if they desire, present written arguments and, at the commission's discretion be allowed to present oral arguments. The party presenting an appeal to the commission (appellant) shall have ten (10) days from the date of mailing of the commission's notification of appeal receipt within which to file written argument. The appellee shall have seven (7) days thereafter within which to file response. Written argument shall be considered filed when it is received by the department as defined in 787 KAR 1:230. The commission may extend the time for filing written argument upon a showing of good cause by either party to the appeal.
 - (b) The commission may, however, direct the taking of additional evidence before it, if needed, in order to determine the appeal. If, in the discretion of the commission, additional evidence is necessary to determine the appeal, the parties shall be notified of the time and place the evidence shall be taken at least seven (7) days prior to the date on which the evidence will be taken.
 - (c) The commission, at its discretion, may return any case or issue to a referee for the taking of additional evidence as it desires. The referee shall take the testimony in the manner prescribed for the hearing of appeals before referees and shall thereupon return the record to the commission for its decision thereon.
- (3) The hearing of appeals by the commission on cases ordered removed to it from any referee. Any case ordered by the commission to be removed to it, shall be heard and decided by the commission in the manner prescribed in Section 3 of this administrative regulation.
- (4) The determination of appeals before the commission.
 - (a) Following the conclusion of a hearing the commission shall promptly announce its decision, which may be either an affirmation of the decision of the referee, or a separate finding of facts, decision and reasons therefor. The decision shall be in writing and shall be signed by the members of the commission who heard the appeal. At the discretion of the commission, its decisions may be designated as representing precedent for future cases of similar circumstance. Decisions designated as precedent shall be binding on all lower levels of determination.
 - (b) If a decision of the commission is not unanimous, the decision of the majority shall control. The minority may file a dissent from the decision of the majority setting forth the reasons why it fails to agree with the majority.

- (c) Copies of the decision shall be mailed to all interested parties.
- (5) Reconsideration.
 - (a) A party adversely affected by a decision of the Kentucky Unemployment Insurance Commission may, within twenty (20) days of the mailing date of the decision, file application for reconsideration of the commission's decision. The commission may grant or deny the application for reconsideration. An application for reconsideration shall be considered initiated and filed at the time it is received by the department as defined in 787 KAR 1:230. The commission shall respond to requests for reconsideration by mail within three (3) working days after receipt.
 - (b) An application for reconsideration of a decision of the commission shall not stay the running of time for appeal to the circuit court, if the application is denied.
- (6) Precedent decision process and digest. The Kentucky Unemployment Insurance Commission shall develop, distribute, and maintain a manual or digest containing all precedent decisions currently valid. The manual shall be available, on request, at a fee established by the commission. Individual decisions shall be available on request without charge.

Section 3. Appeals to the Commission From an Employing Unit.

- (1) Presentation of an appeal to the commission.
 - (a) Any employing unit wishing to make application for review of any administrative determination pursuant to KRS 341.430(2), or to appeal from a notice of income tax refund intercept issued by the Revenue Cabinet in full or partial satisfaction of any outstanding contribution, interest or penalty assessment, may do so by filing with the commission, the division or its authorized representative a written statement clearly indicating the employing unit's intention to appeal within the time limits prescribed by statute.
 - (b) An application or appeal shall be considered initiated and filed at the time it is received by the department as defined in 787 KAR 1:230.
- (2) Notification of hearings. Upon receipt of an appeal made under this section, unless denied as untimely, a hearing shall be scheduled promptly to gather pertinent evidence. Notices thereof shall be mailed to all interested parties at least seven (7) days before the date of hearing specifying the time and place of hearing, except that, the commission may, when the exigencies of the situation in its judgment require, set a case for hearing before the expiration of seven (7) days, only then, however, upon agreement of all interested parties. Any party may request the rescheduling of a hearing for compelling circumstances, subject to the approval or denial of the commission or its authorized representative.
- (3) Appointment of commission representative. The commission may direct that any hearing be conducted on its behalf by an authorized representative, provided, however, that no representative shall participate in the hearing of an appeal in which he has an interest. Challenges to the interest of any representative shall be heard and decided by the commission.
- (4) Hearing of appeals.
 - (a) Any party to the appeal may present pertinent evidence and may question the opposite party and his witnesses. The commission shall, if it deems it necessary to secure full information on the issues, examine each party who appears and his witnesses. The commission may take any additional evidence which it deems

necessary; but, if additional evidence is taken, all interested parties shall be afforded an opportunity of examining and refuting the same.

- (b) The parties to an appeal, with the consent of the commission or its authorized representative, may stipulate the facts involved, in writing. The commission may decide the appeal on the basis of this stipulation or may schedule a hearing and take further evidence as it deems necessary.
 - (c) The hearing shall be scheduled and held at a place where the parties can attend without undue expense or inconvenience.
 - (d) The hearing may be conducted via teleconference if circumstances warrant.
 - (e) The commission may in its discretion grant a continuance of a hearing in order to secure necessary evidence.
 - (f) Parties to a teleconference hearing who wish to introduce documents or written materials into the record at the hearing, must immediately mail copies of the documents to the commission and to the opposing party. Failure to provide both the commission and the opposing party with copies of this evidence may result in its being excluded from the record.
- (5) Decisions.
- (a) Following the conclusion of a hearing the commission shall promptly set forth in writing its finding of the facts, its decision and its reasons therefor; provided, however, that if the appellant fails to appear and prosecute his appeal, the commission may summarily affirm the administrative determination or notice of income tax refund intercept from which the appeal was made. The decision shall be signed by the members of the commission who considered the appeal. At the discretion of the commission, its decisions may be designated as representing precedent for future cases of similar circumstance. Decisions designated as precedent shall be binding on all lower levels of determination.
 - (b) If a decision of the commission is not unanimous, the decision of the majority shall control. The minority may file a dissent from the decision of the majority setting forth the reasons why it fails to agree with the majority.
 - (c) Copies of the decision shall be mailed to all interested parties.
 - (d) The mechanical recording of the hearing shall be retained by the commission pending further appeal. If no appeal is initiated, the recording shall be destroyed sixty (60) days from the date the final administrative decision is mailed.
 - (e) Any commission decision may be superseded and amended after being released in order to correct obvious technical errors or omissions. The corrected decision shall have the same appeal rights as the decision which it amends or corrects.
- (6) Reconsideration.
- (a) Any party adversely affected by a decision of the commission may, within twenty (20) days of the mailing date of the decision, file application for reconsideration of the commission's decision. The commission may grant or deny the application for reconsideration. An application for reconsideration shall be considered initiated and filed at the time it is received by the department as defined in 787 KAR 1:230. The commission shall respond to the requests for reconsideration by mail within three (3) working days after receipt.
 - (b) An application for reconsideration of a decision of the commission shall not stay the running of time for appeal to the circuit court, if the application is denied.

Section 4. General Rules for Referee and Commission Appeals.

- (1) Issuance of subpoenas. Subpoenas requested by a claimant or an employer to compel the attendance of witnesses or the production of records for any hearing of an appeal shall be issued only on a sworn statement by the party applying for the issuance thereof setting forth the substance of the anticipated proof to be obtained and the need therefor.
- (2) Appeal record. All reports, forms, letters, transcripts, communications, statements, determinations, decisions, orders, and other matters, written or oral, from the worker, employer, or personnel or representative of the division which have been written, sent, or made in connection with an appeal shall constitute the record with respect to the appeal.
- (3) Supplying information from the records of the Division of Unemployment Insurance. Information from the records of the division shall be furnished to an interested party or his representative to the extent necessary for the proper presentation of the party's case, only upon written request therefor. All requests for information shall state, as clearly as possible, the nature of the information desired. Nothing in this administrative regulation shall prevent an interested party or his representative from examining a record in the hands of a referee, the commission or its authorized representative at a hearing.
- (4) Conduct of hearings. All hearings shall be conducted informally without regard to common law, statutory or technical rules or procedure and in a manner as to determine the substantial rights of the parties.
The parties and their witnesses shall testify under oath or affirmation. All issues relevant to the appeal shall be considered and passed upon.
- (5) Reopening hearings. Any party to an appeal who fails to appear at the scheduled hearing may, within seven (7) days from the date thereof, request a rehearing. The request shall be granted if the party has shown good cause for his failure to appear. The request shall be in writing and shall set forth the reasons for this failure to attend the scheduled hearing. The request shall be mailed or delivered to the office where the appeal was filed, to the Appeals Branch, Division of Unemployment Insurance, Frankfort, Kentucky, or to the Unemployment Insurance Commission, Frankfort, Kentucky. Upon the rehearing being granted, notice of the time and place of the reopened hearing shall be given to the parties or to their representatives.
- (6) Providing a testimony (tapes) to interested parties.
 - (a) Parties or their authorized representatives may secure a duplicate of the recording of testimony made at a hearing by contacting the Kentucky Unemployment Insurance Commission at the address listed on the decision.
 - (b) There shall be no charge for this service; however, parties should forward blank cassette tapes with their request in numbers sufficient to record the requested testimony.

Section 5. Service of Process. The Branch Manager, Kentucky Unemployment Insurance Commission, Cabinet for Workforce Development, 275 East Main Street, Frankfort, Kentucky 40621, is hereby designated, by the Kentucky Unemployment Insurance Commission, as the person for receipt of Service of Process (Summons) in Civil Actions filed under the Provisions of KRS 341.450(2).

787 KAR 1:120. Fees for representing claimant.

RELATES TO: KRS 341.115

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation sets the maximum fee that may be charged for representing a claimant.

Section 1. The fee to be charged for representing a claimant in any proceeding before a referee, the commission, or any court, or all three (3) shall not exceed twenty (20) percent of the maximum amount of potential benefits payable with respect to the claim under adjudication.

Section 2. The fee agreed to by the claimant and his representative, if within the maximum established in Section 1 of this administrative regulation, shall be deemed to have been approved by the commission.

Section 3. Enforcement of payment of the fee shall be a matter entirely between the counsel or agent and the claimant. The fee shall not be deducted, either in whole or in part, from the benefit checks otherwise due and payable to the claimant.

787 KAR 1:140. Unemployment insurance fund payments.

RELATES TO: KRS 341.500, 341.510

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation sets the procedure to be used between the Division of Unemployment Insurance, the treasurer of the unemployment insurance fund, the Finance and Administration Cabinet and the Secretary of the Cabinet for Workforce Development for the certification of checks to be written and paid for benefits under the program.

Section 1. All transfers to the state's account in the Unemployment Trust Fund or refund payments made from the clearing account shall be made by the treasurer of the unemployment insurance fund immediately upon receipt of a written order for the action signed by the Director of the Division of Unemployment Insurance or a person designated by the commission and approved by the Secretary of the Cabinet for Workforce Development.

Section 2. Requisitions from the state's account in the unemployment trust fund shall be made by the treasurer within twenty-four (24) hours after the receipt of a written order for the requisition signed by the Director of the Division of Unemployment Insurance or a person designated by the commission and approved by the Secretary of the Cabinet for Workforce Development. Withdrawals, when effected, shall immediately be deposited in the benefit account.

Section 3.

- (1) A computerized tape and benefit payment register for the payment of benefits shall be prepared and presented to the treasurer and certified as correct to the Finance and Administration Cabinet on Form DOA-19 by the Director of the Division of Unemployment Insurance or a person designated by the commission and approved by the Secretary of the

Cabinet for Workforce Development. The computer tape and benefit payment register shall show:

- (a) Claimant's name;
 - (b) Claimant's Social Security account number;
 - (c) Amount of payment to be made;
 - (d) The compensable period for which payment is made;
 - (e) The serial number and the date of issuance; and,
 - (f) Other information that from time to time shall be deemed necessary for proper control.
- (2) After approval by the Secretary of the Finance and Administration Cabinet, the secretary shall present to the treasurer of the unemployment insurance fund a warrant for the issuance of benefit payment vouchers. Upon presentation, the treasurer shall issue benefit payment vouchers with his signature affixed thereto and they shall become a demand upon the depository bank for payment of the amounts specified thereon.

787 KAR 1:150. Interstate claimants.

RELATES TO: KRS 341.145, 341.380

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation governs the division in its administrative cooperation with other states for the payment of benefits to interstate claimants.

Section 1. The following administrative regulation shall govern the secretary in his administrative cooperation with other states adopting a similar administrative regulation for the payment of benefits to interstate claimants.

Section 2. Definitions. As used in this administrative regulation, unless the context clearly requires otherwise:

- (1) "Interstate benefit payment plan" means the plan approved by the Interstate Conference of Employment Security Agencies under which benefits shall be payable to unemployed individuals absent from the state or states in which benefit credits have been accumulated.
- (2) "Interstate claimant" means an individual who claims benefits under the unemployment insurance law of one (1) or more liable states through the facilities of an agent state. The term interstate claimant shall not include any individual who customarily commutes from a residence in an agent state to work in a liable state unless the secretary finds that this exclusion would create undue hardship on claimants in specified areas.
- (3) "State" includes Puerto Rico and District of Columbia.
- (4) "Agent state" means any state in which an individual files a claim for benefits from another state.
- (5) "Liable state" means any state against which an individual files, through another state, a claim for benefits.
- (6) "Benefits" means the compensation payable to an individual, with respect to his unemployment, under the unemployment insurance law of any state.
- (7) "Week of unemployment" includes any week of unemployment as defined in the law of the liable state from which benefits with respect to the week are claimed.

Section 3. Registration for Work.

- (1) Each interstate claimant shall be registered for work, through any public employment office in the agent state when and as required by the law, regulations, and procedures of the agent state. The registration shall be accepted as meeting the registration requirements of the liable state.
- (2) Each agent state shall duly report, to the liable state in question, whether each interstate claimant meets the registration requirements of the agent state.

Section 4. Benefit Rights of Interstate Claimants.

- (1) If a claimant files a claim against any state, and it is determined by such state that the claimant has available benefit credits in such state, then claims shall be filed only against such state as long as benefit credits are available in that state. Thereafter, the claimant may file claims against any other state in which there are available benefit credits.
- (2) For the purposes of this administrative regulation, benefit credits shall be deemed to be unavailable whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable, or whenever benefits are affected by the application of a seasonal restriction.
- (3) The benefit rights of interstate claimants established by this administrative regulation shall apply only with respect to new claims (notices of unemployment).

Section 5. Claims for Benefits.

- (1) Claims for benefits or waiting period shall be filed by interstate claimants on uniform interstate claim forms and in accordance with uniform procedures developed pursuant to the Interstate Benefit Payment Plan.
- (2) Claims shall be filed in accordance with the type of week in use in the agent state. Any adjustment required to fit the type of week used by the liable state shall be made by the liable state on the basis of consecutive claims filed.
- (3) Claims shall be filed in accordance with agent state administrative regulations for interstate claims in local employment offices, or at an itinerant point, or by mail.
 - (a) With respect to claims for weeks of unemployment in which an individual was not working for his regular employer, the liable state shall, under circumstances which it considers good cause, accept a continued claim filed up to one (1) week, or one (1) reporting period, late. If a claimant files more than one (1) reporting period late, an initial claim must be used to begin a claim series and no continued claim for a past period shall be accepted.
 - (b) With respect to weeks of unemployment during which an individual is attached to his regular employer, the liable state shall accept any claim which is filed within the time limit applicable to the claims under the law of the agent state.

Section 6. Determinations of Claims.

- (1) The agent state shall, in connection with each claim filed by an interstate claimant, ascertain and report to the liable state in

question the facts relating to the claimant's availability for work and eligibility for benefits as are readily determinable in and by the agent state.

- (2) The agent state's responsibility and authority in connection with the determination of interstate claims shall be limited to investigation and reporting of relevant facts. The agent state shall not refuse to take an interstate claim.

Section 7. Appellate Procedure.

- (1) The agent state shall afford all reasonable cooperation in taking of evidence and the holding of hearings in connection with appealed interstate benefit claims.
- (2) With respect to the time limits imposed by the law of a liable state upon the filing of an appeal in connection with a disputed benefit claim, an appeal made by an interstate claimant shall be deemed to have been made and communicated to the liable state on the date when it is received by any qualified officer of the agent state.

787 KAR 1:160. Time extension for reports and notices.

RELATES TO: KRS 341.115

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation allows an extension of time for filing reports and paying contributions due to an act of God.

Section 1. The secretary may extend for a reasonable period of time the due date for filing reports and paying contributions as prescribed in 787 KAR 1:030, and the specified time for notifying the division of separations for cause as prescribed in 787 KAR 1:070, if, upon the presentation of sufficient facts by the employer, he finds that failure to file the reports, pay contributions, or notify the division of separations within the time specified was due to an act of God.

787 KAR 1:170. Cash value of board and lodging.

RELATES TO: KRS 341.030

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation sets forth the reasonable cash value of board and lodging when they are in lieu of wages received by the worker and are not specified under the contract of hire.

Section 1. Board, lodging, or any other payment in kind received by a worker in employment from his employing unit in addition to or in lieu of (rather than as a deduction from) money wages shall be deemed to be wages paid by his employing unit.

Section 2. The commission shall determine or approve the cash value of the payments in kind, and the cash value shall be used in determining the wages paid to a worker in employment and in computing contributions due under the law.

Section 3. Where a money value for board or lodging or both furnished an individual in employment is agreed upon in a contract of hire, the amount

so agreed upon shall, if more than the rate specifically determined by the commission or the rates prescribed herein, be deemed the cash value of the board and lodging. If in a given case a rate for board and lodging is determined by the commission, board and lodging furnished in addition to money wages shall be deemed to have not less than the following values:

Full board and room weekly	\$80
Meals per week	\$30
per day	\$5
per meal	\$2
Lodging per week	\$50

787 KAR 1:180. Employer's records.

RELATES TO: KRS 341.115

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation sets forth the records that must be maintained by each employing unit with respect to covered employment and the length of time that the records must be kept.

Section 1. Each employing unit shall establish, maintain and preserve for not less than six (6) years records with respect to covered employment performed in its service, which records shall show:

- (1) For each pay period:
 - (a) The beginning and ending date of the pay period.
 - (b) The total amount of wages paid for covered employment in the pay period.
 - (c) The largest number of workers in covered employment in any one (1) day of each calendar week.
- (2) For each worker:
 - (a) The name and social security account number.
 - (b) His wages paid, showing separately cash payments, the reasonable cash value of remuneration in any medium other than cash, the date on which the payments were made, and the pay period during which the services so remunerated were performed. If the remuneration is in a medium other than cash, show the nature and amount thereof.
 - (c) His total wages payable for each calendar quarter.
 - (d) The date on which he was hired, rehired, or returned to work after a temporary layoff, and the date on which he was separated from covered employment.

Section 2. Each employing unit shall establish and maintain for not less than two (2) years certain additional records for each worker in its employ.

- (1) The records shall be maintained on a calendar week basis, except that, if the employing unit is operating on a seven (7) day pay period basis, the required individual records may be maintained on the basis of such employing unit's seven (7) day period. The records shall show for each seven (7) day period:
 - (a) The amount of wages earned.
 - (b) The number of hours worked.
 - (c) The number of hours of additional work available which was not accepted.
 - (d) The rate of pay for the additional work.
- (2) Each employing unit shall upon request furnish to the Division of Unemployment Insurance or to a worker a certification of the wages

earned and the hours worked, the number of hours of additional work available but not accepted, and the rate of pay for the additional hours of work during the week of unemployment for which the worker claims benefits. This information shall be available by the employing unit not later than seven (7) days after the last day of the seven (7) day period to which the records apply. Any employing unit failing to grant the certification within the specified time shall not be permitted to subsequently contest the amount of benefits paid for the week of unemployment.

787 KAR 1:190. Recoupment and recovery.

RELATES TO: KRS 341.415

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: KRS 341.415(1) limits recoupment and recovery in cases of benefits overpaid as a result of "departmental error". The purpose of this administrative regulation is to delineate the actions and instances which shall constitute "departmental error" for the purpose of recovery and recoupment. This administrative regulation further requires that the department shall provide a listing of overpayments with liens to credit reporting agencies.

Section 1. The following shall constitute "departmental error" in the payment of benefits:

- (1) Errors in computing benefit rate;
- (2) Incorrect weekly payment due to failure to consider deductible amount;
- (3) Payment beyond the expiration of the benefit year;
- (4) Payment in excess of maximum benefit amount;
- (5) Payment under incorrect program where no program adjustment can be made;
- (6) Retroactive nonmonetary determinations;
- (7) Monetary redeterminations;
- (8) Payment during a period of disqualification;
- (9) Payment to wrong claimant;
- (10) Erroneous payments resulting from a malfunction of automatic data processing equipment provided the malfunction is the result of human error in the data entry process.

Section 2.

- (1) The department shall, on a monthly basis, compile a listing of outstanding overpayments on which a lien has been created. The listing shall be made available to credit reporting agencies. The listing shall be compiled in an electronic format which the department has the capability to produce if requested by the credit reporting agency.
- (2) Overpayments that result from departmental error shall be not subject to the filing of a lien nor reporting to credit reporting agencies.

787 KAR 1:200. Maximum weekly benefit rate.

RELATES TO: KRS 341.380

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: KRS 341.380 requires the Secretary for Workforce Development to determine the average weekly wage for insured employment. Fifty-five (55) percent of this amount adjusted to the nearest multiple of one (1) dollar constitutes the maximum weekly unemployment insurance benefit rate for those workers whose benefit year commences on or after July 1, 1996, and prior to July 1, 1997. This administrative regulation applies the mathematical computation required by statute and contains the determination of the maximum weekly benefit rate.

Section 1. The secretary finds the following to exist:

- (1) The "total monthly employment" reported by subject employers for the calendar year of 1994 was 18,593,452;
- (2) The "average monthly employment," obtained by dividing the total monthly employment by twelve (12), was 1,549,454;
- (3) The "total wages" reported by subject employers for the calendar year of 1995 was \$36,017,761,705;
- (4) The "average weekly wage" for the calendar year of 1995 for insured employment, obtained by dividing the average monthly employment into total wages for such year and dividing by fifty-two (52), was \$447.03;
- (5) Fifty-five (55) percent of the average weekly wage of \$447.03 for the calendar year of 1995 was \$245.87.

Section 2. On the basis of the above findings, and in accordance with KRS 341.380(3), the maximum weekly benefit rate for those workers whose benefit year commences on or after the first day of July 1996, and prior to the first day of July 1997, is determined to be \$246.00.

787 KAR 1:210. Employer contribution rates.

RELATES TO: KRS 341.270

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: KRS 341.270 requires the Secretary for Workforce Development to determine the rate schedule for employer's contributions. The rate schedule in effect for each calendar year is determined by the "trust fund balance" as of December 31 of the preceding year. This administrative regulation applies the mathematical computation required by KRS 341.270 and sets forth the applicable rates to be in effect for the calendar year.

Section 1. Trust Fund Balance. The secretary finds the following to exist:

- (1) The "trust fund balance" as of December 31, 1995 was \$470,825,898.93.
- (2) There was no outstanding loan from the Federal Unemployment Trust Fund as of December 31, 1995.

Section 2. Rate Schedule. On the basis of the findings in Section 1, and in accordance with KRS 341.270, Schedule A of Table A shall be in effect for calendar year 1996, because the "trust fund balance" equals or exceeds \$350,000,000 on December 31, 1995. Rates listed in Schedule A of Table A are listed below.

<u>Employer Reserve Ratio</u>		<u>Rate Schedule</u>
8.0% and over		0.30%
7.0% but under	8.0%	0.40%
6.0% but under	7.0%	0.50%
5.0% but under	6.0%	0.70%

4.6% but under 5.0%	1.00%
4.2% but under 4.6%	1.30%
3.9% but under 4.2%	1.50%
3.6% but under 3.9%	1.80%
3.2% but under 3.6%	2.00%
2.7% but under 3.2%	2.10%
2.0% but under 2.7%	2.20%
1.3% but under 2.0%	2.30%
0.0% but under 1.3%	2.40%
-0.5% but under -0.0%	6.50%
-1.0% but under -0.5%	6.75%
-1.5% but under -1.0%	7.00%
-2.0% but under -1.5%	7.25%
-3.0% but under -2.0%	7.50%
-4.0% but under -3.0%	7.75%
-6.0% but under -4.0%	8.25%
-8.0% but under -6.0%	8.50%
Less than -8.0%	9.00%

787 KAR 1:220. Required reports and due dates.

RELATES TO: KRS 341.190, 341.262

STATUTORY AUTHORITY: KRS 151B.020, 341.115, Internal Revenue Procedures 93-18, 93-31

NECESSITY AND FUNCTION: KRS 341.190 authorizes the Secretary of the Cabinet for Workforce Development to require the furnishing of certain information and records by employing units concerning wages paid, employment and other related matters. KRS 341.262 provides that a penalty will be assessed for failure to submit reports when due. Internal Revenue Procedures 93-18 and 93-31 require employers of more than 250 workers to report wage data for federal purposes using magnetic media, or incur penalties prescribed in Internal Revenue Code Section 6721. This administrative regulation delineates the required reports and information with attendant due dates, and adopts the federal magnetic media reporting requirements for reporting of wage information for state unemployment insurance purposes.

Section 1. Required Reports.

- (1) For the purpose of this administrative regulation, following are the required reports, which are incorporated by reference: Employer's Quarterly Unemployment Wage and Tax Report (UI-3), and Reimbursing Employer's Quarterly Wage and Tax Report (UI-3R).
- (2) For employers with more than five (5) workers performing service in covered employment during the quarter being reported, a report shall not be considered filed unless it includes the name, social security number and wages of each worker.
- (3) For employers with more than 250 workers performing service in covered employment during the quarter being reported, a report shall not be considered filed unless the name, social security number, and wages of each worker are reported using magnetic media in a format approved by the department for this purpose. The secretary or his authorized representative shall waive this requirement upon a showing of a lack of automation, severe economic hardship, or other good cause. Good cause shall include proof that the employer has been exempted from reporting wage information using magnetic media under any like provision of

federal law. Request for waiver from this requirement shall be made in writing specifying the reason for the request.

Section 2. Due Dates.

- (1) Except as provided in subsection (2) of this section, the due date for the filing of a required report shall be the last day of the month following the close of the calendar quarter in which wages are paid in covered employment.
- (2) The initial due date for the filing of a required report by an employing unit newly subject under the provisions of KRS 341.070 shall be the last day of the month following the quarter in which the employing unit is first given notice by the department of its liability as a subject employer, provided that:
 - (a) For the purpose of this administrative regulation, no employing unit shall be deemed to be newly subject if:
 1. Prior to beginning employment in Kentucky, it has previously been determined subject under the unemployment compensation law of any other state; however, it shall be deemed to be newly subject if all wages paid in covered employment in Kentucky were reported to another state unemployment compensation program by the due date specified by that state; or
 2. If it has previously been determined subject under the provisions of KRS 341.070 but subsequently terminated subjectivity under the provisions of KRS 341.250(2); and
 - (b) This subsection shall not apply if the employing unit has failed to file a required report due to willful intent to evade filing. In this case the provisions of subsection (1) of this section shall apply.

Section 3. Reports shall be considered received by the department as defined in 787 KAR 1:230.

787 KAR 1:230. Due dates.

RELATES TO: KRS 341.262, 341.300, 341.430, 341.450
STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation defines the date received by the department as used in KRS Chapter 341 and Kentucky administrative regulations as it relates to the timely filing of reports, protests, appeals, or the payment of contributions, and extends the due date when the due date falls on a day the office of the department is closed.

Section 1. A contribution payment, report, protest, or appeal shall be considered received by the department as of the date it is delivered to any office of the department or deposited in the mail or with a commercial postal service on or before the due date, as indicated by the postmark applied by the U.S. Postal Service or official mark applied by a commercial postal service. The mark made by a privately-held postage meter shall not be considered in determining the date of receipt.

Section 2. When a due date falls on a day the office of the department is closed, the next day the office is opened shall be considered the due date.

787 KAR 1:240. Fraud disqualifications.

RELATES TO: KRS 341.370

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: KRS 341.370(2) provides that a worker shall be disqualified from receiving benefits for any week with respect to which he knowingly made a false statement to establish his right to or the amount of his benefits, and, within the succeeding twenty-four (24) months, for the additional weeks immediately following the date of discovery, not to exceed a total of fifty-two (52), as may be determined by the secretary. This administrative regulation establishes the number of additional weeks of disqualification to be imposed.

Section 1. Unreported Earnings. If a determination is issued finding that a claimant with fraudulent intent did not report wages earned during a week of unemployment for which unemployment insurance benefits were claimed, in addition to the disqualification imposed for each week, an additional period of disqualification shall be imposed for each week of unreported earnings as follows: six (6) weeks for each week the unreported earnings are less than one and one-fourth ($1\frac{1}{4}$) times the weekly benefit amount and twelve (12) weeks for each week the unreported earnings are equal to or more than one and one-fourth ($1\frac{1}{4}$) times the weekly benefit amount, except that no period of additional disqualification shall be less than twelve (12) weeks.

Section 2. Misrepresentation or Nondisclosure. If a determination is issued that a claimant through fraudulent misrepresentation or nondisclosure of fact, other than unreported earnings which is addressed in Section 1 of this administrative regulation, attempted to establish his right to or the amount of his unemployment insurance benefits, in addition to the disqualification imposed for that week, an additional twenty-six (26) week period of disqualification will be imposed from the date of discovery of the misrepresentation or nondisclosure.

787 KAR 1:250. Release of notice of levy.

RELATES TO: KRS 341.820(1)

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: KRS 341.820(1) authorizes the release of levy upon all or part of the property or rights to property levied upon if it is determined that the action will facilitate collection of liability. This administrative regulation establishes the conditions under which levy may be released.

Section 1. The secretary or his designated representative may release levy when either:

- (1) The delinquent employer enters into a satisfactory arrangement placing property in escrow to secure payment of the liability, including expenses of levy;
- (2) The delinquent employer furnishes an acceptable bond conditions upon payment of the liability, including expenses of levy;
- (3) A payment is made of an amount determined to be equal to the interest of the division in the seized property or of the part of the seized property to be released. A release of levy under this section is not to be confused with the discharge of property from the tax lien.

However, the amount to be paid under this release provision would be determined in the same manner;

- (4) The delinquent employer enters into a partial payment agreement; or
- (5) The value of the interest of the division in the seized property to be released is insufficient to cover the expenses of the sale.

787 KAR 1:260. Voluntary election of coverage.

RELATES TO: KRS 341.070(9), 341.250(3)

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation establishes the process for approval of voluntary election of coverage.

Section 1. An employing unit seeking election of coverage under KRS 341.250(3) shall include in its written election the following information:

- (1) For the two (2) calendar years preceding the date of election, or for the total length of existence of the organization, whichever is less:
 - (a) A list of all funding sources, the revenues received from each, and duration of funding provided from each, accompanied by supporting documentation including grant applications, funding approval letters, and any other relevant material;
 - (b) A list of all employees along with gross salaries paid.
- (2) For the two (2) calendar years following the date of election:
 - (a) A list of all anticipated funding sources, the revenues expected from each, and expected duration of funding from each, accompanied by any available documentation supporting these projections;
 - (b) The number of workers anticipated, and projected salaries for each position.

Section 2. Approval of voluntary election of coverage shall be made only if the employing unit seeking coverage satisfies each of the following:

- (1) Stability or growth of employment over the period of time specified in Section 1 of this administrative regulation;
- (2) Reliability of funding sources;
- (3) Reasonable assurance of continuity or growth of funding levels over the period of time specified in Section 1 of this administrative regulation.

Section 3. Notwithstanding the above, no approval shall be granted for voluntary election in any calendar year if, in the preceding calendar year, the revenues deposited to the Unemployment Trust Fund were less than the total benefits paid.

787 KAR 1:270. Covered employment.

RELATES TO: KRS 341.050, 341.055

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation sets forth conditions affecting certain covered and noncovered employment.

Section 1. Service by Officers, Directors, and Stockholders of Corporations. Within a corporation:

- (1) An officer shall be presumed to be in covered employment if, under the corporation's charter, bylaws, or minutes he is required to perform some service, whether or not the service is actually performed.
- (2) Stockholder, directors, or officers who received remuneration in the form of salaries or wages (that is, carried on the corporation payroll records or provided for in its bylaws or minutes) shall be presumed to be in covered employment whether or not services are actually performed.
- (3) Directors of corporations who perform no other service for the corporation other than to attend directors' meetings shall not be in covered employment.

Section 2. Family Exempt Employment. In applying family exemption:

- (1) Family exemption applies only in proprietorships or partnerships. In a partnership, an exempt relationship must exist with each partner in order for employment to be noncovered.
- (2) Stepchildren under age twenty-one (21) who are employed by their parent(s) shall bear the same family exempt relationship as that of natural or adopted children, but only if the stepparent(s) claim them as exemptions on federal and state income tax returns.

787 KAR 1:280. Limitation on pension deductions.

RELATES TO: KRS 341.390

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: Under KRS 341.390(3)(a) a pension, retirement or retired pay, annuity or other similar periodic payment received by a worker under a plan contributed to by a base period or chargeable employer is 100 percent deductible from a worker's unemployment insurance benefit amount. The statute provides the authority to limit the deduction if the worker contributed to the payment plan. The purpose of this administrative regulation is to provide for a limitation.

Section 1. If the worker contributed to a pension, retirement or retired pay, annuity or other similar periodic payment plan deductible under KRS 341.390(3)(a), the amount deducted from the worker's weekly benefit amount shall be limited to fifty (50) percent of the amount of the payment received by the worker for that week.

787 KAR 1:290. Contract construction rates.

RELATES TO: KRS 341.070, 341.272

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation defines contract construction for the purposes of rate assignment under KRS 341.272.

Section 1. Definition. For the purpose of rate assignment, those types of service to be considered as contract construction shall be those listed in the Federal Standard Industrial Classification Manual, 1987, under Major Groups 15, 16, and 17, and those listed under Major Group 87 engaged in

management of construction carried out by others, which are adopted by reference. Copies of these chapters shall be available for public inspection and copying in the office of the Tax Status and Accounting Branch, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. to 4:30 p.m. Monday through Friday, or may be obtained by writing to the above address or by telephone at (502) 564-2272.

Section 2. To be considered a contract construction employer, one-half (½) or more of the service upon which liability is established under KRS 341.070 shall be in contract construction.

787 KAR 1:300. Successorship.

RELATES TO: KRS 341.070, 341.540
STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: This administrative regulation sets forth the conditions under which one employing unit shall be found to be successor to another.

Section 1. Determination of Successorship. Successorship shall be deemed to have occurred between two (2) employing units when the following conditions exist:

- (1) Negotiation occurs to bring about the transfer, either directly between the parties to the transfer, or indirectly through a third party intermediary.
- (2) At least two (2) of the following conditions are met, provided that this condition shall not be satisfied if only paragraphs (c) and (d) of this subsection are met:
 - (a) The business was a going concern when acquired. For the purpose of this administrative regulation, a going concern shall also include a business which has temporarily ceased subsequent to the date on which negotiations to transfer the business were begun.
 - (b) The subsequent owner or operator continued or resumed basically the same type of business in the same location.
 - (c) The subsequent owner employed fifty (50) percent or more of the previous owner's workers in covered employment.
 - (d) The previous owner employed fifty (50) percent or more of the subsequent owner's workers in covered employment.
 - (e) The subsequent owner acquired work contracts or commitments from the previous owner.

787 KAR 1:310. Claimant profiling.

RELATES TO: KRS 194.030(9), 341.350(2)
STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY AND FUNCTION: 42 USC 503(a)(10) and 42 USC 503(j) require states to establish profiling systems to identify unemployment claimants who would be likely to exhaust regular benefits for referral to reemployment services, and to hold claimants ineligible to receive unemployment benefits if they fail to participate in reemployment services after having been so identified. KRS 341.350(2) was amended by the 1994 General Assembly to conform to this requirement, and made the Secretary of the Cabinet for Workforce Development responsible for establishing a profiling system. The purpose of this administrative regulation is to prescribe conditions, consistent with the provisions of 42 USC 503(a)(10), which enable a

claimant to be treated as having satisfied the requirement to participate in reemployment services as a condition of receiving benefits.

Section 1. Any claimant who, pursuant to KRS 341.350(2) is required to participate in reemployment services, such as job search assistance services, as a condition of receiving unemployment insurance benefits, shall be deemed to have satisfied this requirement if:

- (1) The claimant has completed the services to which he is referred; or
- (2) There is justifiable cause for the claimant's failure to participate in the services. For the purpose of this administrative regulation, "justifiable cause" shall be interpreted to mean what a reasonable person would do in like circumstances.

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